TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~294.~~ 71

THE CITY OF BROWNSVILLE, PLAINTIFF IN ERROR,

vs.

MARIA JOSEFA CAVAZOS ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED OCTOBER 26, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 294.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption, names of parties and number of the suit	1	1
Petition	2	1
Answer of Maria Josefa Cavazos	6	3
Answer of Charles Stillman	8	4
Answer of William G. Hale	9	5
Answer of Brownsville Levee Company	11	6
Answer of John Treanor	12	6
Plaintiff's demurrer to defendant Stillman and Hale's plea in reconvention	13	7
Amended answer of Mrs. Cavazos	14	8
Amended answer of Charles Stillman	18	9
Amended answer of Wm. G. Hale	21	11
Transcript of proceedings in United States Circuit Court at Brownsville, filed at Galveston	24	12
Discontinuance to defendants John Treanor and the Brownsville Levee Company	27	14
Affidavit of James Stillman	29	14
Order, from minutes, death of Charles Stillman suggested, and his heirs made parties defendant	30	15
Petition of Mrs. Frances E. Hale, widow of Wm. G. Hale, deceased	31	15
Orders, from minutes, death of Wm. G. Hale suggested, and his heirs made parties defendant, and continued	34	17
Replication of plaintiff to defendant Maria Josefa Carazos' plea in reconvention	35	17
Replication of plaintiff to defendant Maria Josefa Cavazos' pleas of limitation and prescription	39	19
Replication of plaintiff to defendants Stillman and Hale's heirs' pleas of statute of limitations	41	20
Replication of plaintiff to defendants Stillman and Hale's heirs' plea in reconvention, res adjudicata, and statutes of limitation	45	22
Defendants' disclaimer of sundry portions of premises	53	25

	Original.	Print.
Defendants' answer, rejoinder to plaintiff's replication	54	26
Demurrer of plaintiff to Stillman and Hale's heirs' rejoinder to plaintiff's replication	55	26
Surrejoinder of plaintiff to Stillman and Hale's heirs' rejoinder	57	27
Reply of plaintiff to Stillman and Hale's heirs' disclaimer	58	28
Certified copy of order of United States circuit court, appointing H. A. Maltby commissioner, and certificate of his qualification	61	29
Order, from minutes, first day of trial	62	29
Agreement of counsel waiving a jury	63	30
Defendants' second amendment, plea in reconvention	63	30
Order, from minutes, second day of trial	64	31
Replication of plaintiff to amended and second amended pleas in reconvention of Stillman and Hale's heirs	65	31
Order, from minutes, third day of trial	67	32
Order, from minutes, fourth day of trial	67	32
Order from minutes, fifth day of trial, and conclusion of trial	68	32
Opinion of court	68	33
Judgment, from minutes	82	39
Statement of facts by the court	98	45
In which are embraced the following:		
Map (marked p. 1)	99	45
Field-notes of George Lyon's survey of ejidos of Brownsville, October 5, 1850 (p. 2)	100	45
An act to incorporate the city of Brownsville, approved January 24, 1850 (p. 5)	105	49
An act to incorporate the city of Brownsville, approved February 7, 1853 (p. 6)	115	52
Political constitution of the State of Tamaulipas of 1825 (p. 7)	121	55
Decree of the congress of Tamaulipas, erecting Matamoras into a town, 28th January, 1826 (p. 8)	129	58
Letter of Representative Manuel Prieto, presenting copy of the charter to the ayuntamiento, January 30th, 1826 (p. 9)	130	59
Proceedings of the ayuntamiento, treating upon the survey of the ejidos, February 26, 1826 (p. 10)	131	59
Petition of Maria Francisca Cavazos to the president of the ayuntamiento of Matamoras, March 28, 1826 (p. 11)	134	60
Petition of Maria Francisca Cavazos to the superior tribunal of justice, April 11, 1826 (p. 12)	136	61
Certificate of Juan José Garcia Cavazos, April 10, 1826 (p. 13)	138	62
Order of the governor on petition of Maria Francisca Cavazos, April 18, 1826 (p. 14)	139	62
Report of the alcalde of Matamoras to the governor regarding Maria Francisca Cavazos' complaints, May 8, 1826 (p. 15)	139	63
Petition of Maria Francisca Cavazos to the governor, May 2, 1826 (p. 16)	143	64
Decree of the governor assigning Maria Francisca Cavazos the use of her labors, May 11, 1826 (p. 17)	147	66
Proceedings of Matamoras against Maria Francisca Cavazos, June 21, 1826 (p. 18)	148	67
Original survey of the ejidos of Matamoras, August, 1826 (p. 19)	149	
Matamoras to the governor, transmitting proceedings of survey, December 11, 1826 (p. 20)	157	70
The governor's acknowledgment of the receipt of proceedings of survey, January 11, 1827 (p. 21)	157	70

	Original.	Print.
Communication of Matamoras to the governor in relation to the ejidos, March 8, 1827 (p. 22)	158	70
Communication of Matamoras to the governor, advising of the removal of syndic Antonio Maria Casas, April 21, 1827 (p. 23)	160	71
Final decree of the congress of Tamaulipas respecting the expropriation of the ej dos and general law of expropriation, October 15, 1827 (p. 24)	163	72
Proceedings of the ayuntamiento of Matamoras, ordering citation of owners of the land taken for ejidos to Victoria for indemnity, December 3, 1831 (p. 25)	164	73
Proceedings of the ayuntamiento ordering citation of owners again to appear at Victoria for the indemnity of the lands taken for ejidos, April 19, 1834 (p. 26)	167	74
Judicial proceedings of the 1st alcalde of Matamoras ordering citation of owners of land ot ejidos to appear in Victoria in thirty days. Citation of M'a Francisca Cavazos, and her waiver of indemnity, April 23, 1834 (p. 27)	168	75
Ordinance of the city of Matamoras relating to rents of labors, May 16, 1834 (p. 28)	170	75
Article 165 of the constitution of Tamaulipas of 1825 (p. 29)	170	76
Condition in the Espiritu Santo grant, September 26, 1781 (p. 30)	171	76
Contract for building market-house in Brownsville (p. 31)	171	76
Interrogatories to H. B. Rickey (p. 32)	178	79
Deposition of H. B. Rickey and Exhibits (p. 32)	179	79
Abstract from the journals of the city of Brownsville relating to market place, November 2, 1850 (p. 33)	182	81
Agreement of counsel, possession by United States of Fort Brown not to prejudice, &c. (p. 34)	184	82
Proceedings of county court of Cameron County, Tex., granting ferry license to the city of Brownsville, September 7th, 1850 (p. 35)	184	82
Proceedings of county court, Cameron County, Tex., granting ferry license to city of Brownsville, June 15, 1853 (p. 36)	190	84
Proceedings in district court, Cameron County, Tex., to appraise Fort Brown, November 29, 1853 (p. 37)	191	85
Proceedings of county court of Cameron County, Tex., granting ferry license to city of Brownsville, May 2, 1854 (p. 38)	195	87
Certified copy of letter of protest of the mayor of Brownsville against payment of rents of Fort Brown, Tex., to Maria Josefa Cavazos, Feb'y 26, 1869 (p. 39)	197	88
Interrogatories propounded to the witnesses Leocadio Salinas, José D. Garcia, Encarnacion Salas, Lino Barcenas, Felipe Gutierrez and Leonardo Garza	201	89
Cross-interrogatories propounded to above-named witnesses	206	92
Answers of Leocadio Salinas to interrogatories propounded	209	93
Answers of Leocadio Salinas to cross-interrogatories propounded	221	97
Answers of José D. Garcia to interrogatories propounded	222	98
Answers of José D. Garcia to cross-interrogatories propounded	232	102
Answers of Encarnacion Salas to interrogatories propounded	235	103
Answers of Encarnacion Salas to cross-interrogatories propounded	246	107
Answers of Lino Barcenas to interrogatories propounded	248	108
Answers of Lino Barcenas to cross-interrogatories propounded	259	112
Answers of Felipe Gutierrez to interrogatories propounded	261	113
Answers of Felipe Gutierrez to cross-interrogatories propounded	271	116
Answers of Leonardo Garza to interrogatories propounded	272	117
Answers of Leonardo Garza to cross-interrogatories propounded	282	121

	Original.	Print.
Admission in writing as to Espiritu Santo grant, location, &c., death of Garza in 1790, and inheritance down to 1826, &c	284	122
The English translation of the Espiritu Santo grant from the Crown of Spain to Don José Salvador de la Garza, in 1781 (marked D. 1)	285	122
An act of the legislature of Texas, January 8, 1852, repealing the act of 1850, which incorporated Brownsville (D. 2)	334	145
An act of the legislature of Texas, February 10, 1852, relinquishing to the heirs and assigns of Salvador de la Garza fifty-nine and a half leagues called "Espiritu Santo" (D. 3)	335	145
Last will of Francisca Cavazos (D. 4)	338	147
Extracts from Basse and Hord, record from marginal page 120 to end of page 126, also from marginal page 134, concerning the will, &c., to page 142, ending with "Joaquin Arguelles, notary public" (D. 5)	345	150
Espiritu Santo. Agreement of owners (D. 6)	352	153
Copy of deed from Rafael Garcia Cavazos and Maria Josefa Cavazos to Elisha Basse and Robert H. Hord (D. 7)	356	155
Patent for the Espiritu Santo grant from the State of Texas to the heirs of José Salvador de la Garza (D. 8)	361	156
Deed from Elisha Basse to Stillman and Belden (D. 9)	365	158
Deed from Robert H. Hord to Mifflin Kenedy (D. 10)	368	160
Deed from Mifflin Kenedy to Charles Stillman (D. 11)	371	161
Deed from Charles Stillman to Wm. G. Hale (D. 12)	375	163
Deed of dedication from Basse and Hord to Brownsville (D. 13)	377	164
Extracts from records of common council of Brownsville (D. 14)	382	166
Ferry license to Stillman and Hale's grantors, Basse and Hord (D. 15)	382	166
Receipt for city tax, ferry account, December 13, 1869 (D. 16)	383	167
Reasons for suppression given by plaintiff of all the depositions produced by defendants	384	167
Interrogatories propounded to F. J. Parker, Henry Klahn, and Francisco Yturria	387	168
Cross-interrogatories propounded to above-named parties	392	170
Answers of F. J. Parker to interrogatories propounded	401	174
Answers of F. J. Parker to cross-interrogatories propounded	406	177
Answers of Henry Klahn to interrogatories propounded	416	182
Answers of Henry Klahn to cross-interrogatories propounded	423	185
Answers of Francisco Yturria to interrogatories propounded	433	190
Answers of Francisco Yturria to cross-interrogatories propounded	439	193
Interrogatories propounded to H. M. Field and Antonio Yznaga	452	198
Cross-interrogatories propounded to above-named witnesses	458	200
Deposition of H. M. Field, answers to direct interrogatories	469	204
Deposition of H. M. Field, answers to cross-interrogatories	476	206
Deposition of Antonio Yznaga, answers to direct interrogatories	487	211
Deposition of Antonio Yznaga, answers to cross-interrogatories	494	213
Proof of heirship of Stillman and Hale's heirs	510	219
Extract from Watrous impeachment book, pages 1265 to 1268, inclusive (D. 17)	510	219
Reasons of objection of plaintiff to proceedings and action in petition of John Treanor, and decree of government, and petition of John Treanor, &c. (D. 18)	519	224
Disclaimer of congress of Tamaulipas 1848 (D. 19)	539	231
A transcript from the records and minutes of the corporation of Brownsville (D. 20)	540	232
Extract from Watrous book, page 944 (D. 21)	542	234
Interrogatories propounded to Samuel P. Gelston and Louis Cowen	543	234
Cross-interrogatories propounded to Samuel P. Geltson and Louis Cowen	549	236

	Original.	Print.
Deposition of Louis Cowen, answers to direct-interrogatories	554	239
Deposition of Louis Cowen, answers to cross-interrogatories	557	240
Deposition of Samuel P. Gelston, answers to direct-interrogatories	559	241
Deposition of Samuel P. Gelston, answers to cross-interrogatories	564	243
Exhibit A 1, transcript from minutes of first corporation of Brownsville	571	245
Exhibit A 2, transcript from minutes of present corporation of Brownsville	593	257
Direct-interrogatories propounded to James G. Browne, Alexander Werbiski, and John Castaing	616	268
Cross-interrogatories propounded to above-named witnesses	624	271
Deposition of Alexander Werbiski, answers to direct-interrogatories	629	273
Deposition of Alexander Werbiski, answers to cross-interrogatories	636	276
Deposition of James G. Browne, answers to direct-interrogatories	642	278
Deposition of James G. Browne, answers to cross-interrogatories	649	280
Deposition of John Castaing, answers to direct-interrogatories	654	282
Deposition of John Castaing, answers to cross-interrogatories	660	285
Notice to John P. McDonough by Basse and Hord (p. 40)	665	287
Report of James B. Miller and W. H. Bourland, commissioners to investigate land titles west of the Nueces, (p. 43)	667	287
Petition of Matamoras to government for order of survey, February 12, 1835 (p. 41)	673	290
Petition, pleadings, judgment of supreme court, &c., in Basse and Hord v. The City of Brownsville, marked p. 42, p. 42 B, p. 42 C, and p. 42 D	686	296
Testimony of Stephen Powers for plaintiff	697	301
Agreement of counsel as to statement of facts	713	307
Petition for and allowance of writ of error	714	307
Order from minutes, allowance of writ of error	715	308
Writ of error to circuit court	715	308
Citation in error issued	717	309
Assignment of errors and prayer for reversal by plaintiff	719	310
Agreement of counsel as to what clerk shall include in transcript in error	722	311
Copy writ of error to circuit court deposited in clerk's office for defendant in error	723	312
Plaintiff's first bill of exceptions	725	313
Plaintiff's second bill of exceptions	726	313
Plaintiff's third bill of exceptions. *		
Plaintiff's fourth bill of exceptions	727	314
Plaintiff's bill of exceptions No. 4 †	729	314
Bond for writ of error	731	316
Clerk's certificate to transcript	735	317
Original writ of error	736	317
Original citation in error, with the marshal's return thereon	738	318
Amended assignment of error	740	319

* NOTE.—The third bill of exceptions noted in the assignment of errors was not filed and is not herein inserted.

Attest:

C. DART, *Clerk.*

† NOTE.—The fifth bill of exceptions noted by plaintiff was not filed and is not herein inserted.

Attest:

C. DART, *Clerk.*

1 In the circuit court of the United States for the eastern district of Texas, in the fifth circuit, holding sessions at Galveston.

THE CITY OF BROWNSVILLE, PLAINTIFF,
v.
MARIA JOSEFA CAVAZOS, ELIZABETH P. STILLMAN, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, Bessie G. Stillman, James R. Cox, guardian ad litem of the two last-named parties; Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, Richard Bernard Hale, and James R. Cox, the guardian ad litem of the six last-named parties, defendants.

Law. No. 887.

Be it remembered that in the above-entitled and numbered cause, lately pending in said court, in which a final judgment was rendered by said court at the regular May term thereof, 1876, to wit, on the 6th day June, A. D. 1876, the Hon. Jos. P. Bradley, associate justice of the Supreme Court of the United States, judge presiding, the following proceedings were had, in words and figures as follows, to wit:

2 *Petition.—Filed 9th July*, 1872.

To the Hon. Wm. H. Russell, judge of the 15th judicial district of Texas, holding court in and for the county of Cameron, in said State:

The petition of the City of Brownsville, a corporation within the county of Cameron aforesaid, created by an act of the legislature of the State of Texas, entitled "An act to incorporate the city of Brownsville," approved February 7th, 1853, respectfully represents:

That on the 1st day of January, 1873, petitioner was lawfully seized and possessed in fee simple of all that section of territory situat*ated* and lying on the left bank or margin of the Rio Grande, in the county of Cameron aforesaid, formerly a part of the town-tract of four leagues of land (ejidas) of the city of Matamoras, in the Republic of Mexico; the said tract of land embracing all the land lying north of the Rio Grande and between it and a line running east and west ten thousand Mexican varas in length, in such manner that a line drawn north from the

3 centre of the main plaza of said city of Matamoras five thousand Mexican varas in extent will bisect the first-named line geometrically; which said tract of land was granted and confirmed to your petitioner by an act of the legislature of the State of Texas, entitled "An act to incorporate the city of Brownsville," approved January 24th, 1850, and by the aforesaid act, entitled "An act to incorporate the city of Brownsville," approved February 7th, 1853.

That on said 1st day of January, 1872, one Maria Josefa Cavazos, who is a citizen and resident of the Republic of Mexico, and one Charles Stillman, who is a citizen and resident of the State of New York, and one Wm. G. Hale, who is a citizen and resident of the State of Louisiana, and one John Treanor, who is a citizen of the State of Texas, and a resident of the said county of Cameron; and the Brownsville Levee Company, being a corporation having its domicil within the said county of Cameron, created by an act of the legislature of the State of Texas entitled "An act to incorporate the Brownsville Levee Company,"

approved November 8th, 1866; all of whom are hereinafter styled the defendants, made entry upon said tract of land, and under pretence and claim of right and title thereto have been committing many acts of trespass thereon, by cutting grass and wood and removing the same; by digging up the ground; by pretending to dispose of parcels and
4 portions of the same; by setting up ferry and wharf privileges annexed thereto, and collecting dues and tolls for the same, and by committing other and various wrongs and injuries in respect to said tract of land, in derogation of the rights of petitioner thereto; all of which acts, pretences, and claims of said defendants are a cloud upon petitioner's title, and are to his great damage, to wit, one hundred thousand dollars.

Wherefore petitioner prays that the said defendants, Maria Josefa Cavazos, Charles Stillman, & William G. Hale, be cited by publication and the said John Treanor be cited by personal service, to answer this petition. And petitioner prays that should any of said non-resident defendants casually come within the jurisdiction of this court, they be personally served with due citation herein.

And petitioner further says that said William G. Hale is the acting president of said Brownsville Co npany, but is a non resident as aforesaid, wherefore petitioner prays that citation by publication be had on said Hale in that capacity; that one Thomas Carson, who is a resident of the county of Cameron aforesaid, is doing and performing the duties of sec retary and treasurer of said Brownsville Levee Company, and that one James L. Rudolph, of the same residence, is one of the directors thereof, wherefore petitioner prays that personal service be made on said Carson and said Rudolph in their said respective capacities.

5 And petitioner prays that, the premises considered, he have judgment adjudging him to be the true and lawful owner in fee-simple of said above-described tract of land, with damages, as aforesaid, and that a writ of possession in due form issue from this court, commanding the sheriff of this county to put petitioner in the full and lawful possession of said tract of land; that the claims and pretences to title thereto set up by said defendants be adjudged invalid in the law; for costs of suit and for general relief, &c.

POWERS & MAXAN,
Att'ys for Pl'ff.

STATE OF TEXAS,
County of Cameron:

Personally came Nestor Maxan, one of the attorneys for the plaintiff in the foregoing petition, and made oath that Maria Josefa Cavazos, Charles Stillman, and Wm. G. Hale, who are styled defendants in said petition, are not residents of the State of Texas.

NESTOR MAXAN.

Sworn to and subscribed before me this 9th day of July, A. D. 1872.

R. B. FOSTER,
Clk Dist. Ct Cam. Co. Tx.

THE STATE OF TEXAS,
County of Cameron, ss:

I, Robert B. Foster, clerk of the district court Cameron County,
6 Texas, hereby certify the foregoing to be a true copy of the original now on file in my office.

In testimony whereof witness my hand and seal of court, this 20th day of May, A. D. 1873.

[SEAL.]

R. B. FOSTER,
Clk Dist. C't Cam. Co. Tx.

The foregoing petition endorsed as follows: No. 1027, No. 202, 887. The City of Brownsville vs. Maria Josefa Cavazos & als.

This action is brought as well to try title as for damages.

POWERS & MAXAN,
Att'ys for Pl'ff.

Petition.—Filed this 9th day of July, A. D. 1872.

R. B. FOSTER,
Clk Dist. C't Cam. Co. Tx.

Filed October 6th, 1873.

F. J. PARKER, *Clerk.*

Filed April 5, '75.

C. DART, *Clk,*
By GEO. C. RIVES, *Dep.*

POWERS & MAXAN,
Att'ys for Pl'ff.

Answer.—Filed April 8th, 1873.

April term, 1873.

STATE OF TEXAS,
County of Cameron:

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

7 And now comes Maria Josefa Cavazos, one of the defendants in this cause, by her attorney, and says that she is not guilty of the wrongs and trespasses whereof the said plaintiff has complained against her.

Matamoros, 5th of April, 1873.

MARIA JOSEFA CAVAZOS.
WM. G. HALE,
For Defendant.

THE STATE OF TEXAS,
County of Cameron:

I, Robert B. Foster, clerk of the district court Cameron County, Texas, hereby certify the foregoing to be a true copy of the original now on file in my office.

In testimony whereof witness my hand and seal of court this 20th day of May, 1873.

[SEAL.]

R. B. FOSTER,
Clk Dist. C't Cam. Co., Tex.

The foregoing answer endorsed as follows: 887. Dist. court, Cameron County. No. 207. The City of Brownsville vs. Maria Josefa Cavazos et als. No. 1027. Answer.

Filed April 8th, 1873.

R. B. FOSTER,
Clk Dist. C't Cam. Co., Tx.

Filed April 5, '75.

C. DART, *Clk,*
By GEO. C. RIVES, *Dep.*

Copy. Filed October 6th, 1873.

F. J. PARKER, *Clerk.*

8 *Answer.—Filed April 8th*, 1873.

April term, 1873.

STATE OF TEXAS,
County of Cameron :

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

And now comes Charles Stillman, one of the defendants in this cause, by his attorney, and says that he is not guilty of the wrongs and trespasses whereof the said plaintiff has complained against him.

And the said Charles Stillman further says that he is one of the owners of the tract of land included within the boundaries claimed by the plaintiff, which is more particularly described in a conveyance made by Maria Josefa Cavazos to the said Charles Stillman and Samuel A. Belden. For this, defendant refers to the records of the district court of the county for greater certainty, and prays leave to make them a part of this plea; and while so the owner and seized and possessed of the said land, to wit, on the first day of January, 1872, the said plaintiff entered upon the said land of this defendant and committed then and there divers and sundry trespasses upon the said property of this defendant, to the damage of this defendant one hundred thousand dollars.

Wherefore this defendant pleads the foregoing facts in reconvention and prays judgment for his said damages and costs of suit.

WM. G. HALE,
For Def't.

9 THE STATE OF TEXAS,
County of Cameron :

I, Robert B. Foster, clerk of the district court, Cameron county, Texas, hereby certify the foregoing to be a true copy of the original now on file in my office.

In testimony whereof witness my hand and seal of court this 20th day of May, 1873.

[SEAL.]

R. B. FOSTER,
Clk Dist. C't Cam. Co., Tx.

The foregoing answer endorsed as follows: 887. Dist. court, Cameron County, No. 202. The City of Brownsville vs. Maria J. Cavazos et als. No. 1027. Answer.

Filed April 8th, 1873.

R. B. FOSTER,
Clk Dist. C't Cam. Co., Tx.

Filed April 5, '75.

C. DART, *Clk*,
By GEO. C. RIVES, *Dep.*

Copy. Filed October 6, 1873.

F. J. PARKER, *Clerk.*

Answer.—Filed April 8th, 1873.

April term, 1873.

STATE OF TEXAS,
County of Cameron:

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

And now comes William G. Hale, one of the defendants in this
10 cause, in his own proper person, and says that he is not guilty of the wrongs and trespasses whereof the said plaintiff has complained against him.

And the said William G. Hale further says that he is one of the owners of the tract of land included within the boundaries claimed by the plaintiff, which is more particularly described in a conveyance made by Maria Josefa Cavazos to Charles Stillman and Samuel A. Belden; for this, defendant refers to the records of the district court of the county for greater certainty, and prays leave to make them a part of this plea; and while so the owner and seized and possessed of the said land, to wit, on the 1st day of January, 1872, the said plaintiff entered upon the said land of this defendant and committed then and there divers and sundry trespasses upon the said property of this defendant, to the damage of this defendant one hundred thousand dollars; wherefore this defendant pleads the foregoing facts in reconvention, and prays judgment for his said damages and costs of suit.

WM. G. HALE,
For Defendant.

THE STATE OF TEXAS,
County of Cameron:

I, Robert B. Foster, clerk of the district court, Cameron County, Texas, hereby certify the foregoing to be a true copy of the original now on file in my office.

In testimony whereof witness my hand and seal of court this 20th day of May, 1873.

[SEAL.]

R. B. FOSTER,
Clk Dist. C't Cam. Co., Tx.

11 The foregoing answer indorsed as follows: 887. Dis. court, Cameron County, No. 202. The City of Brownsville vs. Maria J. Cavazos et als. No. 1027. Answer.

Filed April 8th, 1873.

R. B. FOSTER,
Clk Dist. C't Cam. Co., Tx.

Filed April 5, '75.

C. DART, *Clk.*
By GEO. C. RIVES, *Dep.*

Copy. Filed October 6th, 1873.

F. J. PARKER, *Clerk.*

Answer.—Filed April 8th, 1873.

April term, 1873.

STATE OF TEXAS.
County of Cameron:

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

And now comes the Brownsville Levee Company, one of the defendants in this cause, by its president, William G. Hale, and says that it is not guilty of the wrongs and trespasses whereof the said plaintiff has complained against it.

WM. G. HALE,
President of the Brownsville Levee Company.

THE STATE OF TEXAS,
County of Cameron:

I, Robert B. Foster, clerk of the district court Cameron County, Texas, hereby certify the foregoing to be a true copy of the original now on file in my office.

12 In testimony whereof witness my hand and seal of court this 20th day of May, A. D. 1873.

[SEAL.]

R. B. FOSTER,
Clk Dist. Ct Cam. Co., Tx.

The foregoing answer endorsed as follows: 887. The City of Brownsville vs. Maria J. Cavazos et als. No. 202. Answer. No. 1027.

Filed April 8th, 1873.

R. B. FOSTER,
Clk Dist. Ct Cam. Co., Tx.

Copy. Filed October 6th, 1873.

F. J. PARKER, *Clerk.*

Filed April 5, '75.

C. DART, *Clk,*
By GEO. C. RIVES, *Dep.*

Answer.—Filed Aug't 9th, 1873.

THE CITY OF BROWNSVILLE
vs.
M'A JOSEFA CAVAZOS ET ALS. No. 1027.

Now comes John Treanor, one of the defendants herein, by his attorney, and defends the force and injury, when, &c., and says he is not guilty of the said supposed wrongs, injuries, and trespasses as laid to his charge, or any or either of them in manner and form as the said plaintiff hath thereof complained against him, and of this he puts himself upon the country.

JOHN TREANOR.

THE STATE OF TEXAS,
County of Cameron:

13 I, Robert B. Foster, clerk of the district court, Cameron County, Texas, hereby certify the foregoing to be a true copy of the original now on file in my office.

In testimony whereof witness my hand and seal of court this 20th day of May, 1873.

[SEAL.]

R. B. FOSTER,
Clk Dist. Ct Cam. Co. Tx.

The foregoing answer endorsed as follows: 887. No. 1027. No. 202. The City of Brownsville vs. Ma Josefa Cavazos et als. Answer of def't John Treanor.

Filed Aug't 9th, 1873.

R. B. FOSTER,
Clk Dist. Ct Cam. Co. Tx.

Filed April 5, '75.

C. DART, *Clk*,
By GEO. C. RIVES, *Dep.*

Copy. Filed October 6, 1873.

F. J. PARKER, *Clerk.*

Demurrer.

Filed March 2nd, 1875.

In circuit court of U. S., east'n d't of Texas, at Brownsville.

THE CITY OF BROWNSVILLE
vs.
M'A JOSEFA CAVAZOS ET ALS. } No. 202.

1. Now comes the pl'ff herein, by its attorneys, Powers & Maxan, & demurs to the pleas in reconvention filed herein on the 8th day of April, 1873, by the defendants, Charles Stillman & William G. Hale, in
14 which the said defendants pretend to set up an affirmative claim to a portion of the land sued for by the plaintiff in this suit; and the said pl'ff assigns as special causes of demurrer, that said pleas in reconvention do not set forth by metes and bounds, nor in other sufficient & definite manner, the location & limits of the land so claimed by the said defendants to enable the said pl'ff to reply or plead to the said reconvention.

2. The description of said claim is vague, uncertain, indefinite, & affords no data by which to identify the land claimed by the said def'ts in their said pleas of reconvention. Wherefore the said plaintiff prays judg't that said pleas in reconvention be overruled, struck out, & altogether held for nothing, & for costs, &c.

POWERS & MAXAN,
Att'ys for Pl'ff.

The foregoing demurrer endorsed as follows: No. 202, 887. In circuit c't of the U. S. eastern dist. of Texas, at Brownsville. The City of Brownsville vs. Ma. Josefa Cavazos et als., pl'ffs. Demurrer to def'ts Stillman & Hale's plea in reconvention.

Filed March 2nd, 1875.

F. J. PARKER, *Clerk.*

Filed April 5, '75.

C. DART, *Clk*,
By GEO. C. RIVES, *Dep.*
POWERS & MAXAN,
Pl'ff's Att'ys.

Amended answer.—Filed March 10, '75.

15 United States circuit court for the eastern district of Texas, March term, 1875.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

Amended answer of Mrs. Cavazos.

And now comes the said defendant, Maria Josefa Cavazos, by Wm. G. Hale, her attorney, by leave of the court for that purpose first had & obtained, and pleads this her amended answer to the said plaintiff's petition, and says:

I. That she is not guilty of any of the said wrongs and trespasses set forth in the said petition, of which the said plaintiff hath complained against her.

II. And for a second and further defence, by the like leave, the said defendant says that at the times in that behalf in the said petition stated, and long before, and ever since, she, this defendant, hath been and is the owner of a tract of land comprised within the limits of the lands and premises intended to be described in the said petition; that is to say, being a part of the original Espiritu Santo grant, situated on the left bank of the Rio Grande River, and being all that part of what is intended to be described in said plaintiff's petition as the "ejidos of Matamoros," bounded as follows: Beginning at the most northern angle of the quartermaster's fence at the Fort Brown Reservation; thence running due north along the east line of the lands of Stillman & Hale to a line drawn east and west at right angles to the termination of another line running 5,000 Mexican varas magnetic north from the
16 centre of the main plaza of Matamoros; thence eastwardly to the limits of the so called "ejidos" of Matamoros; thence southwardly on said eastern limits to the left bank of the said Rio Grande River; thence up the said left bank, on the margin of said river, to the southwest corner of the garrison grounds of said Fort Brown; thence eastwardly along the south line of the lands of Stillman and Hale to the place of beginning; also another piece of land, being part of the so called "ejidos," lying west of the above described, bounded on the south by the Rio Grande, on the west and north by the limits of the so called "ejidos," and on the east by the lands of Stillman & Hale; and being so the owner, and seized and possessed of the said premises, to wit, on or about the 1st day of January, 1872, the said plaintiff, by its agents & servants, unlawfully entered upon the said premises, and then & there committed divers & sundry trespasses upon this defendant's said property, to her damage of fifty thousand dollars.

Wherefore this defendant pleads the foregoing in reconvention, praying judgment against said plaintiffs for said damages, with the costs of this action.

III. And this defendant, by like leave further answering, says for a third defence, that she was in peaceable and continuous adverse possession of said premises by herself, her ancestors and grantors, under good title derived from the proper sovereigns of the soil, for more than three years, that is to say, for one hundred years next before the
17 instituting of this action; nor was this action commenced until the year 1872; and the same is barred by the statute of limitations relating to three years' possession.

IV. And for a further and fourth defense, this defendant, by like leave as aforesaid, further says, that she has by herself, her ancestors and grantors, for more than five years next prior to the commencement of this action, to wit, for one hundred years, been in quiet, peaceable and continuous adverse possession of said premises, using and enjoying the same and paying the taxes thereon, claiming title under deeds and conveyances duly registered; wherefore, in virtue of the statutes of five years' limitation, this action is forever barred.

V. And for a further and fifth defense, this defendant, by like leave as aforesaid, further says, that she was in peaceable and continuous adverse possession, use and enjoyment thereof for more than ten years next before the commencement of this action; and that during all that time neither the said plaintiff, nor any person in its behalf, nor any of its pretended grantors, ever made any lawful entry thereon whatever; wherefore this defendant claims that this action is barred by the ten years' statute of limitations.

WM. G. HALE,
Att'y for said Def't.

The foregoing amended answer endorsed as follows: 887. U. S. circt court, east. dist. of Texas. The City of Brownsville vs. Maria Josefa
18 Cavazos & als. Amended answer of Mrs. Cavazos. Wm. G. Hale att'y for d'f't.

Filed March 10, '75.

F. J. PARKER,
Clerk.

Filed April 5th, 1875.

C. DART, *Clk*,
By GEO. C. RIVES, *Dep.*

Amended answer.—Filed March 10, '75.

United States circuit court for the eastern district of Texas. March term, 1875.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS & ALS.

Amended answer of def't C. Stillman.

And now comes the said defendant, Charles Stillman, by his attorney, and by leave of the court first had & obtained, pleads his amended answer, and says:

I. That he is not guilty of the said wrongs and trespasses whereof the said plaintiff has complained against him.

II. And for a second defense, by like leave, the said Charles Stillman says that at the time in that behalf in said petition stated, and ever since and long before, he was and is one of the owners of a tract of land comprised within the limits of the land and premises intended to be described in the said petition; that is to say, situated on the left bank of the Rio Grande, beginning at the most northern angle of the quartermaster's fence of the Fort Brown Reservation; thence running due north

to a line drawn east & west at right angles to the termination of
19 another line running 5,000 Mexican varas magnetic north from the centre of the main plaza of the city of Matamoras; thence after reaching said line, running along the same westwardly to a point due north of the place where the line of a survey made for said Stillman strikes the said Rio Grande, said line passing through a warehouse formerly of John Young, near the town of Mansfield; thence due south to the warehouse point above mentioned; thence following the meanders of the said Rio Grande down to the point where the western line of said quartermaster's fence strikes the said river; thence along the line of said fence to the place of beginning, including the town site of the city of Brownsville; and that while being so the owner, and seized and possessed of the said premises, to wit, on and about the first day of January, 1872, the said plaintiff, by its officers & servants, unlawfully entered upon the said premises, and then and there committed divers and sundry trespasses upon this defendant's said property, to his damage of one hundred thousand dollars.

Wherefore this defendant pleads the foregoing facts in reconvention, and prays judgment for his said damages, with costs of this action.

III. And this defendant, by like leave further answering, says for a third defence, that he was in peaceable & continuous adverse
20 possession under title from the proper sovereigns of the soil of the whole of said premises for more than three years next before the institution of this action, nor was this action commenced until the year 1872, and the same is barred by the statute of limitations relating to three years' possession.

IV. And for a further and fourth defense, this defendant, by like leave as aforesaid, further says, that he was for more than five years next prior to the commencement of this action in quiet, peaceable and continuous adverse possession of the said premises, using and enjoying the same, and paying the taxes thereon, claiming title under deeds & conveyances duly registered; wherefore, in virtue of the statute of five years' limitation, this action is forever barred.

V. And for a further and fifth defense, this defendant, by like leave as aforesaid, further says, that he was in peaceable and continuous adverse possession, use and enjoyment of the said premises for more than ten years next before the commencement of this action; and that during all that time neither the said plaintiff nor any person in its behalf, nor any of its pretended grantors, ever made any lawful entry therein whatever; wherefore this defendant claims that this action is barred by the ten years' statute of limitation.

WM. G. HALE,
Att'y for Def't C. Stillman.

21 The aforegoing amended answer endorsed as follows: 887. U. S. circ't court, east'n dist. Texas. The City of Brownsville vs. Maria J. Cavazos & als. Amended answer of C. Stillman. Wm. G. Hale, att'y for d'f't.

Filed March 10, '75.

F. J. PARKER.

Filed April 5, '75.

C. DART, *Clk*,
By GEO. C. RIVES, *Dep.*

Amended answer.—Filed March 10, '75.

United States circuit court for the eastern district of Texas, March term, 1875.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS & ALS.

Amended answer of Wm. G. Hale.

And now comes the said defendant, Wm. G. Hale, in his own proper person, by leave of the court for that purpose first had & obtained, pleads this his amended answer, and says:

I. That he is not guilty of the said wrongs and trespasses whereof the said plaintiff has complained against him.

II. And for a second defense, by like leave, the said defendant Wm. G. Hale says, that at the time in that behalf in said petition stated and long before and ever since that time he was and is one of the owners of a tract of land comprised within the limits of the land and
22 premises intended to be described in the said petition, that is to say, situated on the left bank of the Rio Grande, beginning at the most northern angle of the quartermaster's fence of the Fort Brown Reservation; thence running due north to a line drawn at right angles to the termination of another line running east and west 5,000 Mexican varas magnetic north from the center of the main plaza of the city of Matamoras; thence, after reaching said line, running along the same westwardly to a point due north of the place where the line of a survey made for said Charles Stillman strikes the Rio Grande; said line passing through a warehouse formerly of John Young, near the town of Mansfield; thence due south to the warehouse point above mentioned; thence following the meanders of the said Rio Grande, down to the point where the western line of said quartermaster's fence strikes the said river; thence along the line of said fence to the place of beginning, including the town-site of the city of Brownsville; and while being so the owner & seized and possessed of the said premises, to wit, on or about the 1st day of January, 1872, the said plaintiff, by its officers & servants, unlawfully entered upon the said premises, and then and there committed divers and sundry trespasses upon this defendant's said property to his damage of $100,000.

Wherefore this defendant pleads the foregoing facts in recon-
23 vention, and prays judgment for his said damages with costs of this action.

III. And this defendant, by like leave, says, for a third defense, that being in peaceable & continuous adverse possession under title of said premises from the proper sovereign of the soil for more than three years next before the alleged cause of action accrued, and before institution of this action, this action was not commenced until the year 1872, and the same is barred by the statute of limitations, relating to three years' possession.

IV. And for a further and fourth defense this defendant, by like leave as aforesaid, further says that he was for more than five years next prior to the commencement of this action in quiet, peaceable, & continuous adverse possession of said premises, using and enjoying the same, & paying the taxes thereon, claiming title under deed & conveyances

duly registered; wherefore in virtue of the statute of five years' limitation this action is forever barred.

V. And for a further and fifth defense this defendant, by like leave as aforesaid, further says that he was in peaceable and continuous adverse possession, use, and *and* enjoyment of the same for more than ten years next before the commencement of this action, and that during all that time neither the said plaintiff, nor any person in its behalf, nor any its pretended grantors, ever made any entry therein whatever;
24 wherefore this defendant claims that this action is barred by the ten years' statute of limitations.

WM. G. HALE,
Att'y in pro. per.

The foregoing amended answer endorsed as follows: 887. U. S. circuit court, east. dist. of Texas. The City of Brownsville vs. Maria J. Cavazos & als. Amended answer of Wm. G. Hale. Wm. G. Hale in pro. per.

Filed March 10, '75.

F. J. PARKER, *Clerk.*

Filed April 5, '75.

C. DART, *Clk,*
By GEO. C. RIVES, *Dep.*

Transcript of proceedings at Brownsville.—Filed in U. S. circuit court at Galveston, April 5, '75.

THE UNITED STATES OF AMERICA.
Eastern District of Texas:

In the circuit court of the United States in and for the eastern district of Texas, in the fifth circuit.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } Law 202.

Be it remembered that at a stated term of the circuit court of the United States in and for the eastern district of Texas, in the fifth circuit, begun and holden at the city of Brownsville, in said district, on the first Monday in the month of March, A. D. 1872, present Hon. Amos Morrill, judge; J. G. Boyle, esq., U. S. district attorney; Hon. Lemuel D. Evans, U. S. marshal, by his deputy; T. F. Dewees, esq., & F. J. Parker, esq., clerk, among other, the following proceedings were
25 had—that is to say:

On the 3d day of March, A. D. 1875, the same being a day of said term, the court passed the following order, to wit:

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } Law 202.

Ordered, That defendants have leave to amend their pleadings.

And afterwards, to wit, on the 9th day of March, A. D. 1875, the said day being a day of the term aforesaid of the court aforesaid, the court passed the following order, to wit:

Order.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } Law 202.

On reading and filing affidavits and motion, which affidavits were made by James R. Cox, Adolphus Glaevecke, Francisco Yturria, and Henry Miller, showing that a fair and impartial trial of this cause cannot be had in this city of Brownsville, or county of Cameron, after hearing Mr. Cox and Mr. Hale for the motion, and Messrs. Powers & Maxan opposed, it is ordered that this cause be transferred for trial to Galveston, in said district.

And afterwards, to wit, on the 13th day of March, A. D. 1875, the said day being a day of the term aforesaid of the court aforesaid, the court passed the following order, to wit:

26 THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } Law 202.

MARIA JOSEFA CAVAZOS
vs.
THE CITY OF BROWNSVILLE ET ALS. } Law 28.

MARIA JOSEFA CAVAZOS
vs.
MIGUEL SALINAS & OTHERS. } Law 25 & 33. Consolidated.

In these causes, which have been transferred by order of this court for trial to Galveston, it is now ordered by the court, that the clerk of this court make out a complete and perfect transcript of all the orders and entries in these causes as they appear upon the records of this court, and also the bill of costs incurred by both parties up to this time; and it is further ordered that the clerk transmit all the papers in said causes, together with such transcript and bill of costs, as paid by the respective parties severally in each case, to the clerk of the circuit court of the United States, at Galveston, by such means as the clerk of this court shall deem safe and prompt.

It is further ordered that the respective plaintiffs be required to pay all costs incurred by them as a condition precedent to obtaining the records, and that the clerk be authorized to use the statutory remedies and process to recover his costs of the several defendants.

27 THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } Law 202.

I, F. J. Parker, clerk of the circuit court of the United States, for the eastern district of Texas, at Brownsville, do hereby certify that the foregoing is a true copy of all the orders, entries, and proceedings had in said court in the above-entitled cause.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Brownsville, this 22nd day of March, A. D. 1875.

[SEAL.] F. J. PARKER, *Clerk.*

The foregoing transcript endorsed as follows: Law 202. 887. The City of Brownsville vs. Maria Josefa Cavazos. Transcript of proceedings at Brownsville. Filed April 5, 1875. C. Dart, cl'k, by Geo. C. Rives, dep.

Discontinuance.—Filed May 5th, 1875.

THE CITY OF BROWNSVILLE
vs.
CHARLES STILLMAN, WM. G. HALE, JOHN Treanor & The Brownsville Levee Company. } No. 1027.

And now comes the pl'ff herein, by its attorneys and says that
28 it will not further prosecute this suit as against the defendants, John Treanor and The Brownsville Levee Company.

Wherefore pl'ff prays that said cause be dismissed as to said def'ts, with costs & without prejudice.

POWERS & MAXAN.

THE STATE OF TEXAS,
County of Cameron:

I, Adolphus Glaevecke, clerk of the district court of Cameron County, Texas, do hereby certify that the foregoing and attached paper writing contains a true copy of the original, together with the endorsements thereon, now on file in my office, in cause No. 1027, The City of Brownsville vs. Maria Josefa Cavazos et als.

Witness my hand and the seal of said court, at my office in the city of Brownsville, this 5th day of June, A. D. 1875.

ADOLPHUS GLAEVECKE,
Clerk Dist. Court Cameron Co., Texas.

The foregoing discontinuance endorsed as follows: C. L's 887. No. 1027. The City of Brownsville vs. Maria J. Cavazos, Charles Stillman et als. Discontinuance to def'ts, John Treanor and the Brownsville Levee Comp'y.

Filed May 5th, 1875.

A. GLAEVECKE,
C'k Dist. Court Com. Co., Tex.
By NOAH COX, *Deputy.*

Filed June 15, 1875.

C. DART, *C'k*,
By GEO. C. RIVES, *Dep.*

29 *Affidavit of James Stillman.—Filed January 5th*, 1876.

United States dist. court eastern dist. of Texas.

CITY & COUNTY & STATE OF NEW YORK, *ss:*

THE CITY OF BROWNSVILLE
vs.
CHARLES STILLMAN & OTHERS.

James Stillman, of the city of New York, being duly sworn, says that the said Charles Stillman, one of the defendants in the above-entitled cause, departed this life in this city on the evening of the 18th day of December inst.

That the said deceased left his last will and testament, with certain codicils annexed, which have not been proved; that he left as personal

representatives & heirs at law the following persons and no others: Mrs. E. P. Stillman, his widow, of Cornwall, Orange Co., N. Y.; James Stillman (this deponent), Isabel G. Stillman, and Clara F. Stillman, one son and two daughters who are of age, and Bessie G. Stillman and Charles Stillman, a son and daughter, who are minors under the age of twenty-one years—that is to say, the said Bessie is of the age of 15½ years, and the said Charles is of the age of 19 years in April, 1876.

That the deceased left certain real and personal estate in this State (of New York), and also certain real and personal estate in the State of Texas, the title & transfer of which will probably be affected by the
30 said last will and testament when the same shall be proved, which, as this deponent is advised, will not probably be proved before the last of January, 1876.

JAS. STILLMAN.

Subscribed & sworn before me this 24th day of December, 1875.

SAM'L BLATCHFORD,
District Judge of the United States for the Southern District of New York.

The foregoing affidavit endorsed as follows: 887. U. S. dist. court, Texas. The city of Brownsville vs. Charles Stillman and others. Affidavit of James Stillman. Filed January 5, '76.

C. DART, *Clk.*
By JAMES T. SPANN, *Deputy.*

Order from minutes. Death of Chas. Stillman suggested & his heirs made parties.

December term, 1875, January 5th, 1876.

CITY OF BROWNSVILLE *vs.* CHARLES STILLMAN AND OTHERS. } No. 887.

James R. Cox, counsel of the defendants, suggested to the court the death of the defendant Charles Stillman, on 18th December, 1875, and thereupon the devisees and heirs at law of said Charles Stillman, to wit, Elizabeth P. Stillman, surviving widow, and James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, and Bessie G. Stillman, his heirs at law, all of whom are citizens of the city and State of New York, enter themselves defendants in the place and right of
31 said Charles Stillman, deceased; and the said Charles Stillman and Bessie G. Stillman being minors over 14 years of age, the said James R. Cox is appointed by the court the guardian ad litum in this cause for the said minors; thereupon the said Cox enters his appearance in this cause as such guardian, and the case continued.

Petition of Mrs. Frances E. Hale.—Filed Feb'y 23d, 1876.

United States dist. court for the eastern district of Texas.

THE CITY OF BROWNSVILLE *ag't* WILLIAM G. HALE, MRS. ELIZABETH P. STILLMAN, James Stillman & others, heirs at law of Charles Stillman, dec'd; Mrs. Maria Josefa Cavazos & others, def'ts. } Petition.

Powers & Maxan, att'ys for pl'ff; James R. Cox & Wm. G. Hale, (now deceased), att'ys for def'ts.

The petition of Mrs. Frances E. Hale, of New Orleans, in the State of Louisiana, in behalf of herself as widow of the said William G. Hale, deceased, and also in behalf of her minor children, being the children of said deceased, respectfully shows to this honorable court, that the said petitioner is the widow of the said William G. Hale, late of New Orleans, deceased; and that he departed this life at the said city of New Orleans on the 8th day of January, 1876, leaving besides your petitioner (his widow as aforesaid) six minor children, as follows:

32 1. Frances Josepha Hale, who is of the age of twenty years;
2. William H. Hale, who is of the age of seventeen years;
3. Susan B. Hale, who is of the age of fifteen years;
4. Louisa H. Hale, who is of the age of twelve years;
5. Sarah Alice Hale, who is of the age of nine years; and
6. Richard Bernard Hale, who is of the age of seven years.

Your petitioner further states that said children have no general guardian except your petitioner, who is their mother and natural guardian.

That the said William G. Hale at the time of his decease was one of the defendants in the above-entitled cause, as claiming to be the owner and in possession of an undivided one-third interest in the premises & real estate situated in the county of Cameron and State of Texas, the title to which is in question in this action; the other undivided two-thirds of said premises being owned by the heirs at law of one Charles Stillman, late of New York, now also deceased.

Your petitioner therefore prays that she and her said children aforesaid may be made defendants in the said action as heirs at law and personal representatives of the said William G. Hale, deceased; and that James R. Cox, esqr., of Auburn, New York, who has been associated in the said cause with the said William G. Hale as attorney therein, and who now has the care of the said actions on the part of defendants, may be appointed guardian ad litem for the said infants, with his

33 own consent, in the further conduct of said cause, each of the said minors (over the age of 14 years) herein concurring, as evidenced by their several signatures hereto.

And your petitioner as in duty bound, &c., &c.

FRANCES E. HALE.

Concurring:

FANNY J. HALE.
WILLIAM H. HALE.
SUE BUELL HALE.

In presence of, as to all four signers—
HORATIO HALE,
Of Clinton, Ontario, Canada.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Mrs. Frances E. Hale, of New Orleans, being duly sworn, saith that she is the petitioner named in the foregoing petition, that she hath signed the same, and that the same is true in substance and matter of fact according to the best of her knowledge and belief.

FRANCES E. HALE.

Subscribed & sworn to before me *me* this *this* 9th day of January, 1876, as witness my hand and official seal.

[SEAL.] M. A. DOOLEY,
Commissioner for the State of Texas, resident in the City of New Orleans, State of Louisiana.

The foregoing petition endorsed as follows: 887. U. S. dist. court, east'n dist. Texas. The city of Brownsville vs. William G. Hale, Cavazos, & others. Petition of Mrs. Frances E. Hale. Jas. R. Cox, att'y for def'ts, Auburn, N. Y. Filed Feb'y 23d, 1876. C. Dart, clerk.

34 *Order from minutes.—Death of Wm. G. Hale suggested, & his heirs made parties.*

December term, 1875, February 23d, 1876.

THE CITY OF BROWNSVILLE
vs.
WILLIAM G. HALE AND OTHERS. } No. 887.

In the above cause the death of William G. Hale, one of the defendants in said cause, was made known to the court by the petition and affidavit of his surviving widow, Frances E. Hale, on file in this cause, and it further appearing to the court that his heirs at law who succeeding to his rights in controversey in the above suit are his said widow, Frances E. Hale, and their six children, as follows, namely: Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale; and that the application contained in said petition by the said widow and said children, to be made and entered parties defendant in said cause in the place and stead of said defendant, William G. Hale, ought to be granted, they are hereby made defendants in said cause; and James R. Cox, esq., is appointed by the court guardian ad litem to and for the said Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale, who are all minors under the age of twenty-one years.

Orders from minutes.—Continuance.

December term, 1875, February 28th, 1876. Continued.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET AL. } 887.

35 This done February 18th, 1876, and entered nunc pro tunc.

Replication of pl'ff to Maria Josefa Cavazos' plea in reconvention.—Filed May 25, '76.

In circuit court U. S., eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } No. 887.

Now comes the city of Brownsville in this suit, by its attorneys, Powers & Maxan, and in answer to the plea in reconvention herein filed on the 5th of April, 1875, by or in behalf of the defendant, Maria Josefa Cavazos, says that it is not guilty of the wrongs and trespasses whereof the said defendant in her said plea of reconvention hath complained against it.

And for further answer to the said Maria Josefa Cavazos' said plea in reconvention herein, plaintiff says actio non, because it says the allegations in the plea aforesaid set out, and each of them, are false and untrue, and of this it puts itself upon the country.

And for further answer to the said defendant's plea in reconvention, plaintiff says actio non, because it says that it and those under whom it claims had and held public, adverse, unequivocal, and peaceable, continuous, and uninterrupted possession as owner thereof of the lands in her said plea set forth and described, being the same of which this plaintiff was seized and possessed as sole owner at the time of the filing of said defendant's plea, by metes and bounds, for thirty years and more before the filing of the said plea, or before any action brought by said defendant against this plaintiff. And this it is ready to verify;
36 wherefore it prays judgment, &c.

And for further answer to the plea of reconvention of said defendant herein, the plaintiff says actio non, because it says that it and those under whom it claims had and held public, adverse, unequivocal, peaceable, continuous, and uninterrupted possession as owner thereof of the lands in her said plea set forth and described, being the same of which this plaintiff was seized and possessed as sole owner at the time of the filing of said plea, by metes and bounds, for ten years and more, under just title and in good faith before the filing of said pleas or before any action brought by said defendant against this plaintiff. And this it is ready to verify; wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendant herein, plaintiff says actio non, because it says that the said defendant's action, if any she had, accrued to her and against this plaintiff more than thirty years next before the filing of said plea in reconvention, and the said defendant did not commence this or any action against this plaintiff within thirty years next after her cause of action, if any accrued against this plaintiff. And this it is ready to verify; wherefore it prays judgment, &c.

And further answering to the plea in reconvention of the said defendant, Maria Josefa Cavazos, the plaintiff says actio non, because it says that the said defendant's action, if any she had, accrued to her and
37 against this defendant more than ten years next before the filing of said plea in reconvention, and the said defendant did not commence this or any action against this plaintiff within ten years next after her cause of action, if any, accrued against this plaintiff. And this it is ready to verify; wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendant herein, the plaintiff says actio non, because it says that it and those under whom it claims, had and held adverse, peaceable, continuous, and uninterrupted possession of the lands in said plea set forth and described, being the same of which this plaintiff was seized and possessed, as sole owner at the time of the filing of said plea, by metes and bounds, for three years and more under title next before the filing of said plea in reconvention or before any action brought by said defendant against this plaintiff, and that said defendant did not bring this or any action against this plaintiff within three years next after her cause of action, if any, accrued against this plaintiff. And this the plaintiff is ready to verify, wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendant, Maria Josefa Cavazos, the plaintiff says actio non, because it says that the said defendant's cause of action, if any, accrued to her and against this defendant, who claims under title, more than three years next be-

fore the filing of said plea, and said defendant did not commence
38 this or any action against this plaintiff within three years after her said cause of action, if any, accrued against this plaintiff. And this it is ready to verify, wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendant, this plaintiff says actio non, because it says that it, and those under whom it claims, had and held adverse, continuous, peaceable and uninterrupted possession of the lands in said plea set forth and described, being the same of which this plaintiff was seized and possessed as sole owner, at the time of the filing of said plea by metes and bounds for three years and more under title next before the filing of said plea in reconvention or before any action brought by said defendant against this plaintiff, and that said defendant did not bring this action or any action against this plaintiff within three years next after their cause of action, if any, accrued against this plaintiff. And this the plaintiff is ready to verify, wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendant, Maria Josefa Cavazos; this plaintiff says actio non, because it says that the said defendant's cause of action, if any she had, accrued to her against this plaintiff, who claims under color of title more than three years next before the filing of said defendant's plea in reconvention herein, and the said defendant did not commence this or any action against this plaintiff within three years next after her cause of action, if
39 any, accrued against this plaintiff. And this it is ready to verify.

Wherefore, by reason of all of the foregoing premises, the plaintiff prays that it have judgment against said defendant, Maria Josefa Cavazos, adjudging that it is the true and real owner of said lands; that a writ of possession issue therefor in its favor, and that said defendants pay all costs herein, &c.

POWERS & MAXAN̄,
Att'ys for Pl'ff.

The foregoing replication indorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Replication of pl'ff to Maria Josefa Cavazos' plea in reconvention. Filed May 25th, 1876. C. Dart, clerk.

Replication of pl'ff to defendant Maria Josefa Cavazos's pleas of limitation & prescription. Filed May 25th, 1876.

In the U. S. circuit court, eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS. } C. L. No. 887.

And now comes the City of Brownsville, plaintiff in this suit, by its attorneys, Powers and Maxan, and for replication to so much of the answer of the defendant Maria Josefa Cavazos, as sets up a defense under the statutes of limitation, by way of limitation and prescription, the said plaintiff says that notwithstanding anything in the said answer contained, as averred by the said defendant, which the plaintiff in
40 nowise admits to be true, it ought not to be barred thereby of its action against the said defendant, because it says that the said defendant Maria Josefa Cavazos, during the times and periods set up in her said defences, whereby and wherein she claims and alleges to have prescribed a title to the land in question, or to have barred the

title or action of plaintiff to the said land was, and continued to be up to the time of filing her said pleas of limitation, an alien to the United States of America, and was and continued to be, up to said last-mentioned time, a native-born citizen of the republic of Mexico, residing and having her domicil continuously during said times and periods of limitation set up by her, and up to the time of filing her said pleas of limitation, in the city of Matamoras and State of Tamaulipas, in the republic of Mexico.

Wherefore plaintiff says that said defendant, Maria Josefa Cavazos, was incapacitated in the law from acquiring any title to lands in the State of Texas by prescription, or of barring this plaintiff of any right or action to the land in question herein by any possession or right of possession by the said defendant, Maria Francisca Cavazos. Without this, which plaintiff wholly denies, that the possession of the said defendant Maria Josefa Cavazos, or those under whom she claims, if any she ever had, commenced three, five, ten, or a hundred years before the commencement of this suit.

All of which plaintiff is ready to verify. Wherefore it prays judgment, &c.

41 POWERS & MAXAN,
Att'ys for Pl'ff.

UNITED STATES OF AMERICA,
Eastern Dist. of Texas:

Nestor Maxan, one of the counsel for the City of Brownsville, the plaintiff in the above-entitled suit, being duly sworn, says that the facts stated in the foregoing replication as to the alienage of the defendant, Maria Josefa Cavazos, are true.

NESTOR MAXAN.

Sworn to & subscribed before me this 25th day of May, A. D. 1876.
C. DART,
Clerk U. S. Cir't Court, E. D. T., G.

The foregoing replication endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos. Replication of pl'ff to defendant Maria Josefa Cavazos's pleas of limitation & prescription. Filed May 25th, 1876. C. Dart, clerk.

Replication of plaintiff to defendant's Stillman & Hale's heirs. Pleas of statutes of limitation.—Filed May 25th, 1876.

In U. S. circuit court, eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

And now comes the City of Brownsville, plaintiff in this suit, by its attorneys, Powers and Maxan, and for replication to so much of the answers which set up the defenses of the statutes of limitation of
42 three, five, and ten years, herein, filed by the defendants, Charles Stilman and William G. Hale, dec'd, April 5, 1875, which said defenses now inure to & are adopted by the devisees and heirs at law of the said defendants, the said plaintiff says to each of the said defenses which sets up said limitations, that notwithstanding anything in the said defenses as by the said defendants averred, which the said plaintiff in no wise admits to be true, it ought not to be barred thereby of its action

against the said defendants, because the plaintiff says that the said former defendants, Stillman & Hale, held the said lands and premises, by whatever right, if any they had, as described and set forth in their said answer, pleas, and defenses, under, from, and through Elisha Basse and Robert H. Hord, who were plaintiffs as to the same lands in a suit originally instituted in the district court of Cameron County, in this State, and by changes of venue, lately pending in the district court of Calhoun County, in this State, against this plaintiff; that in the said suit the said plaintiffs, Elisha Basse & Robert H. Hord, filed their petition in trespass to try title against this present plaintiff, the City of Brownsville. on the 14th day of April, 1854, setting forth & suing for the identical lands described in said Stillman & Hale's answers, pleas, and defenses herein, and alleging that they, the said Basse & Hord, were the legal owners and possessors of said lands on the first day of June,
43 1853; and that while they were so seized and possessed of said lands and appurtenances, on the last aforesaid date, the City of Brownsville, being the present plaintiff herein, with force and arms, broke and entered the close of said petitioners, to wit, the said lands, and ousted and ejected them, the said Basse & Hord, therefrom, and did take possession of said lands, and has ever since continued in possession of said land.

That the present plaintiff, as defendant in said suit, answered the petition of said plaintiffs, Basse & Hord, on the 12th of May, A. D. 1855, denying all the allegations thereof, and pleading not guilty of the trespasses in said plaintiff's petition mentioned and set forth, in manner and form as the same were therein stated, and by amended answer the present plaintiff, as defendant in said suit, further set up the statutes of limitation of two, three, and ten years' adverse, peaceable, continuous, and uninterrupted possession of the lands in question, being the same of which it was seized and possessed under title and color of title before and at the time of the commencement of said Basse & Hord's action, by metes and bounds, within the boundary of the lands described in said plaintiff's petition, wherefore the present plaintiff, as defendant in said suit, prayed judgment, &c.

That subsequently, to wit, on the 25th of December, A. D. 1858, the said Basse & Hord obtained a verdict and judgment against the present plaintiff, from which said judgment of recovery of said lands the
44 present plaintiff did take a writ of error to the supreme court of this State whereby the said verdict and judgment of recovery by said Basse & Hord were set aside, and the said supreme court of this State did by its order, judgment, and decree of June 27th, A. D. 1872, proceed to determine and adjudicate the said suit on its merits, and did adjudge that the said Basse and Hord had no title to the said lands, but that the title thereto was in this present plaintiff, and that said supreme court finally dismissed the said petition of said Basse & Hord.

That pending the said suit the said defendants, Stillman and Hale, acquired whatever rights, if any they had, to the said lands in their lifetime; and pending the present suit the said defendants, Stillman & Hale, departed this life, and whatever rights, if any, they had to the said lands fell by descent or bequest to and were vested in the said present defendants, the devisees and heirs at-law of said Stillman and Hale, dec'd.

That during the year and during the two years that elapsed next after the rendition of the said judgment in the supreme court of this State as hereinbefore set forth, neither the said Basse & Hord, nor the said defendants, Stillman & Hale, as their grantees, have brought their

second suit for the said lands as by law is and was to them permitted and allowed, but have wholly failed and neglected to do so.

And so, by reason of the foregoing premises, this plaintiff says that all the right or title from any source whatever which said defend-
45 ants, Stillman & Hale, ever had, or claimed to have or hold, up to the date of the said final judgment upon the merits by the said supreme court of this State, to wit, June 27th, A. D. 1872, together with all rights of possession to said land, were adjudicated against the said Stillman & Hale and in favor of this plaintiff, so that the said defendants are estopped from setting up any right or defence founded on the statutes of limitation which they may or do claim accrued to them previous and up to the last-mentioned date, being the date of said final judgment. Without this, which the plaintiff wholly denies, that the possession of said defendants, or of those under whom they claim, if any they ever had, commenced three, five, or ten years before the commencement of this suit.

All of which the plaintiff is ready to verify, wherefore plaintiff prays judgment, &c., &c.

POWERS & MAXAN,
Att'ys for Plaintiff.

The foregoing replication endorsed as follows: C. L., No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Replication of plaintiff to defendants' Stillman's & Hale's heirs. Pleas of statutes of limitation. Filed May 25th, 1876. C. Dart, clerk.

Replication of plaintiff to def'ts Stillman & Hale's heirs.—Plea in reconvention, &c., &c.—Filed May 25th, 1876.

In circuit court U. S., eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS & ALS. } No. 887.

46 Now comes the City of Brownsville, plaintiff in this suit, by its attorneys, Powers and Maxan, and in answer to the plea in reconvention herein filed by or in behalf of the hereinafter named defendants on the 5th of April, 1875, says that it is not guilty of the wrongs and trespasses whereof the said defendants in their said plea of reconvention have complained against it.

And for further answer to the said plea in reconvention as to the devisees and heirs-at-law of Charles Stillman, late defendant herein, who are now defendants, to wit: Elizabeth T. Stillman, his surviving widow, and James Stillman, Isabel G. Stillman, Clara F. Stillman, & Charles Stillman, and Bessie G. Stillman, the two latter being minors, by their guardian ad litem, James R. Cox, and also as to the devisees and heirs at law of Wm. G. Hale, late defendant herein, who are now defendants, to wit, Frances E. Hale, his surviving widow, and Francesca Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale, minors, by their guardian ad litem, James R. Cox, this plaintiff says actio non, because this plaintiff says the said former defendants, Stillman and Hale, held the said lands and premises by whatever, if any, right they had as described and set forth in said plea, under, from, and through Elisha Basse and Robert H.

Hord, who were plaintiffs as to the same lands in a suit originally instituted in Cameron County, in this State, but by changes
47 of venue lately pending in the district court of Calhoun County, in this State, against this plaintiff; from the judgment of which said district court, recovering said lands against this plaintiff, this plaintiff did take a writ of error to the supreme court of this State, where, by the judgment, order, and decree of the said supreme court, on the 27th day of June, A. D. 1872, the title to the said lands was adjudged to be in this plaintiff, and the said cause was dismissed.

That, pending the said suit, the said defendants, Stillman and Hale, acquired whatever rights, if any they had, to the said lands in their lifetime.

That, pending this suit, the said defendants, Stillman and Hale, departed this life, and whatever rights, if any they had to the said lands, fell by descent or bequest to, and were vested in, the said present defendants, devisees, and heirs-at-law of said Stillman and Hale.

That during the year that elapsed next after the rendition of the said judgment in the supreme court of this State, as herein set forth, neither the said Basse and Hord, nor the said former defendants, Stillman and Hale, as their grantees, have brought their second suit for the said lands as by law is and was to them permitted and allowed, but have wholly failed and neglected to do so.

That during the two years that elapsed next after the said judgment in the supreme court of this State, as herein set forth, neither
48 the said Basse and Hord, nor the said former defendants, Stillman and Hale, as their grantees, have brought their second suit for the said lands, as by law is and was to them permitted and allowed, but have wholly failed and neglected to do so.

And so, by reason of the foregoing premises, this plaintiff says that the said judgment in the supreme court of this State between said Basse and Hord and this plaintiff in the said suit there lately pending as aforesaid is res adjudicata, and that the matters and things therein adjudged in respect of the said lands in the said defendants' plea of reconvention set out cannot again be reopened or re examined to the prejudice of this plaintiff; all of which matters and things herein set forth and alleged this plaintiff is ready to verify. Wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendants herein, plaintiff says actio non, because it says the allegations in the plea aforesaid set out, and each of them, are false and untrue, and of this it puts itself upon the country.

And for further answer to the plea in reconvention of said defendants herein, plaintiff says actio non, because it says that it and those under whom it claims had and held public, adverse, unequivocal, and peaceable, continuous, and uninterrupted possession, as owner thereof, of the lands in said plea set forth and described, being the same of which
49 this plaintiff was seized and possessed as sole owner at the time of the filing of said plea, by metes and bounds, for thirty years and more before the filing of the said plea, or before any action brought by said defendants against this plaintiff; and this it is ready to verify. Wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendants herein, plaintiff says actio non, because it says that it and those under whom it claims had and held public, adverse, unequivocal, peaceable, continuous, and uninterrupted possession, as owner thereof, of the lands in said plea set forth and described, being the same of which this plaintiff was seized and possessed as sole owner at the time of the filing

of said plea, by metes and bounds, for ten years and more, under just title and in good faith, before the filing of said plea, or before any action brought by said defendants against this plaintiff; and this it is ready to verify. Wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendants herein, plaintiff says actio non, because it says that the said defendants' action, if any they had, accrued to them and against this plaintiff more than thirty years next before the filing of said plea in reconvention, and the said defendants did not commence this or any action against this plaintiff within thirty years next after their cause of action, if any accrued, against this plaintiff; and this it is ready to verify. Wherefore it prays judgment, &c.

50 And further answering to the plea in reconvention of said defendants herein, the plaintiff says actio non, because it says that the said defendants' action, if any they had, accrued to them and against this plaintiff more than ten years next before the filing of their said plea in reconvention, and the said defendants did not commence this or any action against this plaintiff within ten years next after their cause of action, if any, accrued against this plaintiff; and this it is ready to verify. Wherefore it prays judgment, &c.

And for further answer to the plea in reconvention of said defendants herein, the plaintiff says actio non, because it says that it, and those under whom it claims, had and held adverse, peaceable, continuous, and uninterrupted possession of the lands in said plea set forth and described, being the same of which this plaintiff was seized and possessed as sole owner at the time of the filing of said plea, by metes and bounds, for three years and more, under title, next before the filing of said plea in reconvention, or before any action brought by said defendants against said plaintiff; and that said defendants did not bring this or any action against this plaintiff within three years next after their cause of action, if any, accrued against this plaintiff. And this the plaintiff is ready to verify. Wherefore it prays judgment, &c.

And for further answer to the pleas in reconvention of said defendants herein, the plaintiff says actio non, because it says that the said

51 defendants' cause of action, if any they have, accrued to them and against this defendant, who claims under title more than three years next before the filing of said plea, and said defendants did not commence this or any action against this plaintiff within three years after their cause of action, if any, accrued against this plaintiff. And this it is ready to verify. Wherefore, it prays judgment, &c.

And for further answer to the plea in reconvention of said defendants, this plaintiff says actio non, because it says that it, and those under whom it claims, had and held adverse, continuous, peaceable, and uninterrupted possession of the lands in said plea set forth and described, being the same of which this plaintiff was seized and possessed, as sole owner, at the time of the filing of said plea, by metes and bounds, for three years and more, under title, next before the filing of said plea in reconvention, or before any action brought by said defendants against this plaintiff; and that said defendants did not bring this or any action against this plaintiff within three years next after their cause of action, if any, accrued against this plaintiff. And this the plaintiff is ready to verify. Wherefore, it prays judgment, &c.

And for further answer to the plea in reconvention of said defendants, this plaintiff says actio non, because it says that the defendants' cause of action, if any they had, accrued to them against this plaintiff, who

claims under color of title more than three years next before the
52 filing of said defendants' plea in reconvention herein, and the said defendants did not commence this or any action against this plaintiff within three years next after their cause of action, if any, accrued against this plaintiff. And this it is ready to verify. Wherefore, by reason of all the foregoing premises, the plaintiff prays that it have judgment against said defendants, adjudging that it is the true and real owner of said lands; that a writ of possession issue therefor in its favor, and that said defendants pay all costs herein.

And comes the said plaintiff into open court, by its said attorneys, and suggests here to the court that it had adverse possession of the land in said defendant's plea in reconvention set forth and described in good faith at least one year next before the filing of said plea, or before any action whatever brought by said defendants against this plaintiff, and that it has made permanent and valuable improvements on said lands during said adverse possession in good faith, and that the said permanent and valuable improvements are worth the sum of fifty thousand dollars.

POWERS & MAXAN,
Att'ys for Pl'ff.

The foregoing replication endorsed as follows: C. L., No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Replication of plaintiff to defendants', Stillman's & Hale's, heirs' plea in reconvention. Res adjudicata & statutes of limitation. Filed May 25th, 1876. C. Dart, clerk.

53 *Def'ts' disclaimer of sundry portions of premises.—Filed May* 26, 1876.

United States circuit court, eastern dist. of Texas, Galveston, May 25, 1876.

THE CITY OF BROWNSVILLE *agt.* MARIA JOSEFA CAVAZOS, ELIZABETH P. STILLMAN, FRANCES HALE, & others. } Disclaimer.

And now come the said defendants, by James R. Cox, of Auburn, N. Y., their attorney & guardian ad litem, and hereby, as to all the several portions and parts of the said lands and premises described in the pleadings in this cause known as "the Washington Square, the public cemeteries, the Market-house Lot," the streets, lanes, and alleys of the said city, and all other of said lands which have been conveyed or dedicated by the said Bass and Hord, or by other of the grantors of these defendants to the said plaintiffs, these defendants hereby disclaim and except all and each of the same from their said pleas in reconvention, and hereby admit and reaffirm each and every conveyance of all such parts and portions of the premises described in these pleadings which has heretofore been made by the said grantors to said plaintiffs, and pray that their answers in this action may be read & understood in connexion with this disclaimer.

JAS. R. COX,
Att'y for Def'ts & Guard. ad litem.

54 The foregoing disclaimer endorsed as follows: C. L., 887. U. S. circuit court. The City of Brownsville v. Cavazos & others. Def'ts' disclaimer of sundry portions of premises. Jas. R. Cox, def'ts' att'y. Filed May 26, 1876. C. Dart, cl'k.

Rejoinder.—Def'ts' answer to pl'ff's replication.—Filed May 26th, 1876.

U. S. circuit court, eastern dist. of Texas.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS & ALS. } Def'ts' answer to replication.

And the said defendants, Elizabeth P. Stillman and others, the heirs at-law of the said Charles Stillman, deceased, and the said Frances E. Hale & others, the heirs of the said Wm. G. Hale, deceased, by James R. Cox, their attorney and guardian ad litem, answer the replications filed in this case this day, and deny each and every allegation in that behalf respecting the said pretended adjudication in the Bass & Hord case, and say that there was no such adjudication as is pretended in said replication.

And for a further answer to said replication, in respect to the allegation that the said Sillman & Hale have not brought their second suit for the said lands as by law allowed, these defendants deny the same, and aver that their pleas in reconvention in this action were originally duly put in, and their title to these lands fully set up within the
55 year after the final action of the said supreme court in the Bass & Hord case referred to in the said replication.

And for a further answer to plaintiff's said replication, in regard to the said alleged possession and valuable improvements made upon the said lands (other than those portions which have been excepted out and disclaimed by the defendants), these defendants deny the same, and put themselves upon the country, & said plaintiffs doth the like, &c.

Wherefore, these defend'ts, &c.

Galveston, May 25, 1876.

JAS. R. COX,
Def'ts' Att'y & Guard. ad litem, &c.

The foregoing rejoinder endorsed as follows: C. L. 887. U. S. circ't court. The City of Brownsville vs. M. Josefa Cavazos & others. Rejoinder. Def'ts' answer to pl'ff's replication. Jas. R. Cox, att'y, &c. Filed May 26th, 1876. C. Dart, cl'k.

Demurrer of pl'ff to Stillman & Hale's heirs.—Rejoinder to pl'ff's replication.—Filed May 29th, 1876.

In U. S. circuit court, eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS & ALS. } C. L. No. 887.

And now comes the plaintiff herein, and as to the rejoinder of the defendants, Stillman & Hale's heirs, filed May 26, 1876, styled in the same as answer to the plaintiff's replication, filed May 25th, 1876,
56 says that the matters and things set forth and contained in said rejoinder, filed as aforesaid, are insufficient in law, and the plaintiff assigns the following causes of demurrer thereto:

1. The said defendants allege that the pleas in reconvention of the said Stillman and Hale, filed respectively herein in this court, April 8, 1873, was the bringing of their second suit, as the vendees of the said Basse &

Hord, to the lands specially in controversy herein, and within the year, to avoid the bar pleaded by plaintiff of res adjudicata as to said particular defendants and the said lands, whereas this plaintiff says that the filing of such pleas in reconvention was a mere defensive measure to the action of the plaintiff in this cause, and is and was not the bringing of a second suit within a year as in this behalf provided by the laws of the State of Texas, where a party or his vendors have suffered a previous recovery as set up and alleged by this plaintiff in its replication herein filed May 25th, 1876, as aforesaid, to said defendants' amended answer herein filed March 10, 1875.

Wherefore the plaintiff prays judgment that said rejoinder be held insufficient, &c.

POWERS & MAXAN,
Att'ys for Pl'ff.

The foregoing demurrer endorsed as follows: No. 887. C. L. The City of Brownsville vs. Maria Josefa Cavazos & als. Demurrer of pl'ff to Stillman & Hale's heirs' rejoinder to pl'ff's replication. Filed May 29th, 1876. C. Dart, cl'k.

57 *Surrejoinder of pl'ff to Stillman & Hale's heirs' rejoinder.—Filed May 29th,* 1876.

In U. S. circuit court, eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS & ALS. } C. L. No. 887.

And now comes the plaintiff herein, and only in the event of its demurrer to defendants', Stillman & Hale's heirs', rejoinder, filed May 26, 1876, being overruled by way of surrejoinder to the said rejoinder, says that notwithstanding anything in the said rejoinder contained the said defendants ought to be barred and concluded by the plea of res judicata filed May 28th, 1876, pleaded by plaintiff in its replication to said defendants' amended answer, because plaintiff says that the statute of Texas authorizing the bringing of a second suit provides and requires that the said suit shall be brought and instituted de novo in the district court of the State for the county wherein the land is situated and in which the first suit was originally brought, and not in any other court, and the said defendants in their said rejoinder allege that they have filed pleas in reconvention respectively within the year as such second suit, and while plaintiff denies that the filing of such pleas in reconvention were or are the bringing of such second suit, plaintiff says that said pleas in reconvention were filed in this the circuit court of the United States for the 5th circuit and eastern district of Texas, wherefore the filing of said pleas, even if considered as substitutes or equivalents for a second suit, are not brought according to law in manner, place, or form sufficient to
58 avoid the bar pleaded by this plaintiff as aforesaid. And this the plaintiff is ready to verify, &c.

And further, by way of surrejoinder, the plaintiff says that the filing said pleas in reconvention by said defendants, April 8, 1873, was and is not the bringing of said second suit, because the said pleas in reconvention were wanting in substance to constitute them as pleas in reconvention of said defendants' claim or as a new action brought de novo, such as is provided by law, against the plaintiff to recover the particular lands in question. And this he is ready to verify.

Wherefore the plaintiff prays judgment that said rejoinder be held for naught, &c.

POWERS & MAXAN,
Att'ys for Plaintiff.

☞ The foregoing surrejoinder endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Surrejoinder of pl'ff to Stillman & Hale's heirs' rejoinder. Filed May 29th, 1876. C. Dart, cl'k.

Reply of plaintiff to Stillman & Hale's heirs' disclaimer.—Filed May 29th, 1876.

In U. S. circuit court, eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS & ALS. } C. L. No. 887.

And now comes the plaintiff herein, and replying to the remittitur of the defendants, the heirs of Stillman & Hale, says that it repudi-
59 ates all and every pretended conveyance or dedication to this plaintiff by or from said Basse & Hord or other the grantors of said defendants, as is alleged in their said disclaimer.

And further plaintiff says, as to the pretended dedication to it of the market-house lots and square, that the same were never so dedicated to it by said grantors of said defendants, nor any right or use thereof accepted or acquired by plaintiff under them, or any of them; that the plaintiff entered on the land on which the said market-house lots and square are situated, as well as all other the lands of its town-tract described in plaintiff's petition herein, by virtue solely of its grant and title from the State of Texas, and has held the same thereunder adversely and hostilely to said defendants and the whole world since the date of its said grant, to wit, January 24, 1850.

That as to Washington Square and the streets, lanes, and alleys in the inhabited portion of the said city of Brownsville, the same were laid out and mapped by George Lyon previous to the first incorporation of said city, and the buildings and other erections in said city by the citizens thereof having generally conformed to the said streets, lanes, and alleys as mapped, thereafter when the plaintiff was first incorporated, January 24, 1850, and received its grant of said lands from the State of Texas, it took possession thereof as it found the same, and in such condition, for convenience' sake, has held and possessed and controlled the same ever since, as provided by its acts of incorporation, without
60 disturbing the said former plat or map of said city. And the plaintiff says that it has never acquired nor accepted any right to or use of any of the streets, lanes, alleys, or squares of said city from the grantors of said defendants, or any of them.

And plaintiff further says, as to any pretended dedication to it of a public cemetery by the grantors of these defendants, that the lands herein involved having been for years in litigation, the respective parties, claimants thereof, to wit, the plaintiff of the one part, and Stillman, Belden & Hale, or Stillman & Belden, of the other part, for the purpose of securing to the public an undisputed place of common burial, as regards the title thereto joined in the designation of such a place, and the same was and became a common and joint dedication for the use of

the inhabitants of the said city of Brownsville; and although the last-mentioned joint dedication took place about the year 1866, yet previously to that time and for many years before, to wit, since 1852, the plaintiff had entered upon said space of ground by virtue of its paramount title, and had dedicated it to the purposes of a cemetery, and the same was thenceforth and is now used as such by the citizens of said city of Brownsville.

And further plaintiff says that at the first incorporation of the said city of Brownsville, January 24, 1850, the said city found the citizens in the use of block No. 144, according to Geo. Lyon's map of said city, in common use as a public burying-ground, and the said city
61 afterwards fenced in and continued the use of the said block as such burying-ground until the aforesaid new cemetery was jointly established in 1852, and thereafter occasionally down to the commencement of the late civil war.

And plaintiff says that it never acquired nor accepted any right to or use of the last-mentioned cemetery from the grantors of said defendants, or any of them, but held the same by virtue of its paramount title to the land.

And the plaintiff now here says that it sues herein the said defendants affirmatively, under its said paramount title, for all and every right of property and possession in and to the lands of its said grant from the State of Texas, set up or pretended by them, and prays judgment according to its original petition herein, &c.

POWERS & MAXAN,
Att'ys for Pl'ff.

The foregoing reply endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Reply of plaintiff to Stillman & Hale's heirs' disclaimer. Filed May 29, 1876. C. Dart, cl'k.

Certified copy of order of U. S. circ't court appointing H. A. Maltby comm'r, and certificate of his qualification, Oct. 6, 1873.—Filed May 29th, 1876.

UNITED STATES OF AMERICA,
Eastern District of Texas:

At a term of the circuit court of the United States for the eastern district of Texas, begun and holden at Brownsville, in the fifth cir-
62 cuit, on the 6th day of October, A. D. 1873, amongst others the following proceeding was had:

Order.

It is hereby ordered that Henry A. Maltby, of Cameron County, Texas, be, and he is hereby, appointed a circuit court commissioner of bail and affidavits for the eastern district of Texas.

UNITED STATES OF AMERICA,
Eastern District of Texas:

I, F. J. Parker, clerk of the court aforesaid, hereby certify the foregoing to be a true copy from the minutes of the court, and that the said Henry A. Maltby has been duly qualified and sworn as is *is* acting as such commissioner in and for the district aforesaid.

Witness my hand and seal of court this 24th day of June, A. D. 1875.

[SEAL.] F. J. PARKER,
Clerk.

The foregoing copy of order endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Covazos & als. Certified copy of order of U. S. circuit court appointing H. A. Maltby comm'r, and certificate of his qualification, Oct. 6, 1873. Filed May 29th, 1876. C. Dart, cl'k.

Order from minutes 1st day of trial, vol. 3, 515.

May term, 1876, May 30th, 1876.

THE CITY OF BROWNSVILLE
v.
63 MARIA JOSEFA CAVAZOS ET AL. } 887.

This day came the parties to this suit, by their attorneys, and thereupon, both parties announcing ready for trial, and having waived a jury in writing, signed by them and filed, submitted the questions of fact as well as of law to the court; thereupon the trial of the case was begun, and, the same not being concluded, the further consideration thereof is postponed until to-morrow.

Agreement waiving jury.—Filed May 30, '76.

U. S. circuit, court eastern dist. of Texas.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS, ELIZABETH P. STILLman, Frances Hale, & others.

GALVESTON, *May* 30, 1876.

This cause, now upon the calendar & ready for trial, it is stipulated may be tried by the court without the intervention of a jury, pursuant to rule 649.

JAS. R. COX,
For Def'ts.
POWERS & MAXAN,
Att'ys for Pl'ff.

(Indorsed:) C. L. 887. City of Brownsville v. Maria Josefa Cavazos et al. Agreement waiving a jury. Filed May 30, '76. C. Dart, cl'k.

Def'ts' second amend. plea in reconvention.—Filed May 31st, 1876.

U. S. circuit court, Galveston, May term, 1876.

64 THE CITY OF BROWNSVILLE
v.
CAVAZOS, STILLMAN, HALE, ET AL.

Now come the defendants in the above cause and by leave of the court amend their pleadings herein, and by way of amendment thereto they pray, in addition to their former prayers, as follows, to wit, for the adjudication of the title of the premises involved in this action in favor of these defendants (excepting those portions set forth in the disclaimer as filed).

May 31, 1876.

JAS. R. COX,
Att'y & Guad. ad lit. for Stillman Heirs, Hale Heirs, & Mrs. M. J. Cavazos.

The foregoing amended plea endorsed as follows: No. ——. City of Brownsville v. Cavazos, Stillman, Hale, & als. Deft's second amended plea in re-convention. Filed May 31st, 1876. C. Dart, cl'k. Jas. R. Cox.

Order from minutes, 2d day of trial, vol. 3, 516.

May term. May 31st, 1876.

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS ET AL. } 887.

On this day again come the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed; and, the trial not being concluded, the further consideration thereof is postponed until to-morrow.

65 *Replication to amended & second amended pleas in reconvention of Stillman & Hale's heirs.—Filed May* 31, '76.

In circuit court U. S., eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS & ALS. } C. L. No. 887.

Now comes the City of Brownsville, plaintiff in this suit, by its attorneys, Powers & Maxan, and in answer to the amended pleas in reconvention and second amended pleas in reconvention, filed March 10, 1875, and May 31, 1876, respectively, by the heirs of Stillman and Hale herein, and by way of replication thereto says:

That as to said defendants actio non, because the former defendants herein, Stillman & Hale, held the said land and premises in their said pleas described by whatever, if any, right they had, as set forth in said pleas, under, from, and through Elisha Basse and Robert H. Hord, who were plaintiffs as to the same lands in a suit originally instituted April 14, 1854, in Cameron County, in this State, but by changes of venue lately pending in the district court of Calhoun County, in this State, against this plaintiff, from the judgment of which said district court recovering said lands against this plaintiff, this plaintiff did take a writ of error to the supreme court of this State, where, by the judgment, order, and decree of the said supreme court, on the 27th day of June, A. D. 1872, the title to said lands was adjudged to be in this plaintiff, and the said cause was dismissed.

66 That pending said suit the said defendants, Stillman & Hale, acquired whatever rights, if any they had, to the said lands in their lifetime.

That pending this suit the said defendants, Stillman & Hale, departed this life, and whatever rights, if any, they had to the said lands fell by descent or bequest to and were vested in the said present defendants, devisees, and heirs at law of said Stillman and Hale.

That during the year that elapsed next after the rendition of the said judgment in the supreme court of this State, as herein set forth, neither the said Basse & Hord nor the said former defendants, Stillman & Hale, as their grantees, have brought their second suit for the said lands, as

by law is and was permitted and allowed, but have wholly failed and neglected so to do.

That during the two years that elapsed next after the rendition of the said judgment in the supreme court of this State, as herein set forth, neither the said Basse and Hord, nor the said former defendants, Stillman & Hale, as their grantees, have brought their second suit for the said lands as by law is and was permitted and allowed, but have wholly failed and neglected so to do.

And so, by reason of the foregoing premises, this plaintiff says that the said judgment in the supreme court of this State between said Basse & Hord and this plaintiff, in the said suit lately pending as aforesaid, is res adjudicata, and that the matters and things therein adjudged
67 in respect of the said lands in the said defendants' first amended and second amended pleas in reconvention set out, cannot again be reopened or re-examined to the prejudice of this plaintiff; all of which matters and things herein set forth and alleged this plaintiff is ready to verify.

Wherefore it prays judgment, &c., &c.

POWERS & MAXAN,
Att'ys for Pl'ff.

The foregoing replication endorsed as follows: C. L. No. 887. The City of Browsville vs. Maria Josefa Cavazos & als. Replication to amended and second amended pleas in reconvention of Stillman & Hale's heirs. Filed May 31, '76. C. Dart, cl'k.

Order from minutes, 3d day of trial, vol. 3, 516, June 1, '76.

May term, 1876.—June 1st, 1876.

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS ET AL. } 887.

On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed, and, the same not being concluded, the further consideration thereof is postponed until to-morrow.

Order from minutes, 4th day of trial, June 2d, '76, vol. 3, 517.

May term, 1876.—June 2d, 1876.

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS ET AL. } 887.

On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed, and, the same not being concluded, the further trial of the case is postponed until to-morrow.

68 *Order from minutes, 5th day of trial, vol. 3, 517.*

May term, 1876.—June 3d, 1876.

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS ET AL. } 887.

On this day again came the parties to this suit, by their attorneys, and thereupon the case was argued by counsel before the court and submitted.

Opinion of court.—Filed July 9, '76.

Opinion of court.

Circuit court of the United States, eastern district of Texas.

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS, CHARLES STILLMAN, William G. Hale, and John Treanon (the said Stillman & Hale having deceased and their heirs being substituted). } On trespass to try title.

On trial before Justice Bradley and Judge Morrill, commencing May 30th, 1876, ending June 5th, 1876.

Maxan, Powers, and Waul for plaintiff; James R. Cox, Jack & Ballinger for defendants.

Opinion, findings, and judgment of the court, a jury being waived by stipulation in writing filed.

The property in question is within the boundary lines of a tract of fifty-nine and one-half leagues called the Espiritu Santo tract, granted by the Spanish Government to one De la Garza in 1781, which grant was recognized by the legislature of the State of Texas, by the
69 "act to relinquish the right of the State to certain lands therein named," approved February 10th, 1852. It is conceded by both parties that for several years prior and up to the year 1826 one Doña Maria Francisca Cavazos was seized of the Espiritu Santo tract (including the lands in dispute), by regular derai*ng*ment of title under said grant. Madam Cavazos died in 1835, and devised the Espiritu Santo tract to three parties, one of whom was Doña Maria Josefa Cavazos, who, by an act of partition between the parties, became seized of that portion of the tract on which the premises in dispute are situated. A portion of these premises she subsequently conveyed to other persons under whom the other defendants claim by regular derai*ng*ment of title. So that the defendants have shown title to the land in dispute for the several parts which they respectively claim, unless the plaintiff can show a better title. This the plaintiff, the City of Brownsville, attempts to do.

The title set up by the city is a title by a proceeding for expropriation, by which, as they allege, the premises in dispute were expropriated as part of the ejidos (or town lands) of the city of Matamoras, in 1826 and 1827.

To explain the nature of this claim it is necessary to advert to the fact that by the Spanish laws which were in operation in Mexico every corporate town became by virtue of the act of incorporation entitled to lay out and appropriate for the public use of the town, for streets, squares, building sites, and small holdings or labors for the people, a town tract of four square leagues, to be two leagues square when admissible.

70 Mexico separated from Spain about the year 1821, and the several States adopted constitutions of government, retaining, however, the Spanish laws as far as they were applicable to their new circumstances; amongst the rest the State of Tamaulipas, which comprised the territory on both sides of the Rio Grande, adopted a consti-

tution in 1825, by the XIIIth article of which it was declared as follows: "Neither the congress nor any other authority shall be able to take the property, even that of the least importance, of any private individual. When it shall become necessary for an object of a common recognized utility to take the property of any person, he shall first be compensated upon the examination of arbiters appointed by the government of the State and the interested party." This was also substantially the old Spanish law.

On the 28th of January, 1826, the congress of Tamaulipas constituted Matamoras (before called Refugio) a town, with power to take the necessary proceedings to ascertain the title to the land on which it was established, causing indemnification to be made agreeably to law, if it should belong to an individual.

The town council in due time proceeded to take measures to lay out the ejidos. They caused the land-owners to be notified and a survey to be made in August, 1826.

This survey took for its central point the centre of the public square in Matamoras, and the ejidos was made to embrace a tract two leagues square, extending one league north, one league south, one league
71 east, and one league west of this point. It was thus made to extend across the Rio Grande and to include about a league and a half of the land of Madam Cavazos, which league and a half is the present site of the city of Brownsville, and is the property in dispute. The survey having been made, the next thing to be done to condemn the land for the ejidos, or town lands, was to make the required indemnification to the owner, before which was done, according to the constitution, the property could not be taken by the city.

But here a difficulty occurred. The indemnification must be made upon the examination of arbiters appointed by the government of the State and the interested party. But Madam Cavazos refused to cooperate in the matter. She opposed the whole proceeding. It took from her her best land along the river front, and even took the farm which she had under her private cultivation. Various efforts were made to compose the difficulty but in vain; at last the State congress, on the 15th of October, 1827, made a decree to the following effect:

"The government in the use of its powers will see that the civil authorities of Matamoras compel Doña Rita Girou (another contestant), and Doña Francisca Cavazos to obey the constitution and the laws. If, being notified the second and third time, those ladies refuse to appoint arbiters for the corresponding indemnification of the lands which are to be taken for ejidos, the ayuntamiento will proceed to their occupation and survey without citing them further. Should the parties
72 or their heirs hereafter ask for the indemnification of their lands and be willing to name an arbiter, as required in the 13th article of the constitution of this State, a new measurement shall be made, if they desire it, and the land they asked for before shall be given them as a recompense. This resolution shall be communicated to the government in order that, acting in accordance with it in the present case, it may serve as a general rule in all others that may occur, until a basis to be observed may be established by law."

The effect of this decree is much controverted by the parties. The plaintiffs insist that it was an adjudication in rem for the expropriation of the lands without compensation to the owners, if they continued recalcitrant, reserving to them, however, a right to obtain compensation at any future time by applying therefor. The defendants insist that it

merely authorized a user of the lands without expropriation, until the parties chose to accept the terms proposed by the government.

The validity of this decree we are not at liberty to question. It was an act of the highest tribunal known to the laws of Tamaulipas, a tribunal invested with supreme judicial as well as legislative authority. It does not belong to us to say that its acts or decrees were unconstitutional. So far as we are concerned, it was sole judge of its powers, and its acts must be accepted by us as having undoubted validity. The true construction and effect of the decree are alone to be sought by us.
73 To arrive at these, we are authorized to look at all the circumstances of the case, the conduct of the parties, the government's own views on the subject, and any other light within our reach.

The most obvious view of the question as it first presented itself to my own mind was this: That as the land-owner refused to avail herself of the privilege accorded to her by the constitution, the legislature could authorize the taking of the land without compliance with the condition of first making compensation, and that this was what the legislature did; that the taking which ensued was followed by all the incidental rights and transfer of title which accompany a taking in any case; in other words, that the expropriation was complete, but the party had a reserved right to claim indemnification whenever she chose to ask for it and comply with the constitutional requisition. The district judge took a different view, and held that the occupation authorized by the decree was a mere usufructuary one, liable to be terminated in case of failure to make due compensation when it should be asked for, and not ripening into title until such compensation should be made.

The language of the decree compared with that of the constitution lends force to this view. The word used in the constitution is property (propriedad); the word used in the decree is occupation (ocupacion). These words seem to have about the same distinction in the Spanish law as in the English; one indicates title the other mere possession and use. Occupation is possession. It confers title where no owner
74 existed before, or where the former owner had abandoned the thing occupied. But where an ownership or dominion already exists, it amounts only to possession and use.

The city authorities of Matamoras proceeded to treat the land as ejidos, granting a large number of labors or town-holdings in it; but the question of indemnity would not be laid. It was agitated until the death of Madam Cavazos in 1835, and afterwards until the United States took possession of the country in 1848, up to which period the State of Tamaulipas continued to exercise de facto jurisdiction over the country.

In 1831 the matter was brought to the attention of the general government again, which, on the 29th of June, in that year, made an order that the ayuntamiento of Matamoras should give information respecting the state of the affairs of the ejidos, and directing the first alcalde to order the owners of the land to present themselves at the capital (Victoria), in person or through an agent, within a reasonable time to be named, so that hearing the attorney-general of finance the indemnification to all might be agreed upon. In 1834 this order was served by the city authorities on the owners a second time, notifying them that this would be the last notice, and if they did not appear they would suffer the damages of the law for interposing obstacles in so important an affair. All this seems to indicate on the part of the city a con-
75 viction that its title was not entirely beyond dispute and needed further support, and on the part of the government a like view of the case.

The answer of Madam Cavazos to this summons is given in evidence. She was told to appear before the supreme government and present the titles of the property in order that the dimensions of the ejidos lands which affected her might be determined. She declined to go or send, giving as an excuse that she was too old; but said, in substance, that she would receive her indemnifications in money, and would submit to whatever the government might order. This is her last appearance on the scene. No evidence is given to show that any money was ever paid, or that any mode of estimating the amount due, different from that required by the constitution, was ever devised by the government. The defendants show some supplementary proceedings taken in 1841 for a re-urvey of the ejidos, in which the Cavazos family were represented and it seems acquiesced. But the survey was not satisfactory to the town authorities, and they refused to receive it, although they had ordered it.

The defendant offers in evidence, also, certain proceedings which took place before the State congress in September and October, 1848. The nature and object of these proceedings were not distinctly explained to us during the reading of the evidence, and we held them under advisement. We have since examined them and find them to be this:

After the treaty of Gaudalupe Hidalgo (which was signed
76 May 30, 1848), the Mexican authorities yielded all claim to jurisdiction east of the Rio Grande. Thereupon the city authorities of Matamoras proposed to sell out to private parties, speculators from the United States, the ejidos of the city on the Texas side.

John Treanor, one of the now defendants representing the Cavazos family, and particularly Doña Josefa, one of the defendants, applied to the general government for an injunction (or what is equivalent thereto) to prohibit the ayuntamiento from making any such sale, on the ground that it had no right to do this, and it would injure the owners. The ayuntamiento put in an answer setting up the claim of the city. The matter was presented to the congress, who referred it to a committee, and that committee made an elaborate and able report, in which they take the ground that as compensation had never been made (which they held to be an indispensable requisite) the right of property was never perfected, and that as no expropriation could now be made in consequence of the change of government the original owners were entitled to receive back their lands and were not confined to compensation; that alienation of the lands would not be a public use but private speculation. They say "the right of expropriation has another and more noble origin. Its object is not to increase the receipts of the public revenues, but to provide for the well-being of the community." They add that is

might also produce complications with the government of the
77 United States of the north, who would perhaps justly contend that property belonging to a municipal body must be considered as public property. Hence the committee recommended the congress to adopt a resolution to the effect that, it being provided by the 13th article of the former constitution and the 71st article of the present that in no case can expropriation be made without previous compensation, and this not having been made as to the ejidos situated on the left bank of the Bravo, the ayuntamiento of Matamoras has not acquired a right of property in that portion, and consequently its former owners preserve it. This resolution was adopted by the congress on the 20th of October, 1848.

We reject these proceedings as evidence, because the congress at Tamaulipas had ceased to have any jurisdiction over the land in question.

But as an authority on the law of that state, and as bearing upon the construction and effect of the decree of October 15th, 1827, it possesses the highest value. The congress had jurisdiction of the parties before it, and of the subject-matter. The city of Matamoras proposed to make a sale and conveyance which would have greatly injured and embar'assed the owners of the Cavazos title, by casting a cloud upon it, and, perhaps, inciting litigation. They applied to the supreme government for relief, and that government decided against Matamoras. It is a decision of the legal question on a case properly made, and, as such, it is
78 worthy of great respect at our hands.

In the light of this decision, and of the other transactions which took place after the decree of October 15th, 1827, we are brought to the conclusion that the decree and the proceedings under it did not have the effect to transfer to the city of Matamoras the title to the lands.

But if we are wrong in this conclusion, there is another point that is fatal to the claim of the plaintiff. As a corporation the existence of the plaintiff commenced with the act of incorporation passed February 7th, 1853, and it has never received from any source the title of Matamoras, if such title had been outstanding, and hence, not having any title of its own to stand on, it must fail in this action.

The only title on which it relies is its charter. But that confers none. It confirms to the citizens of Brownsville, as incorporated by the act, all property, rights in action, and claims to property which were held, owned, occupied, and enjoyed by the citizens of said city under the previous charter of 1850, which had been repealed; but it confirms nothing and grants nothing to the corporation of Brownsville. The first charter did. It relinquished to the corporation all the rights, title, and interest of the State in and to the land that was owned by the town of Matamoras on the 19th of December, 1836. But this charter was re-
79 pealed on the first of March, 1852; and with it the estate, if any was acquired, reverted to the State of Texas.

But on the supposition that on the 19th of December, 1836, there was an outstanding estate in the city of Matamoras, in virtue of the expropriation proceedings, that estate, according to the weight of the later authorities, would revert to the original owners of the land, when the purpose of the expropriation became incapable of further accomplishment, or ceased to exist. Expropriation is a seizure of so much of the owner's property as is necessary for the public purpose. A seizure of more, by adverse-proceedings, would be an abuse of the power. It follows, therefore, that when the purpose is accomplished, or has ceased to exist, the residue of the property belongs to the original owner. But this revertee must be subject to any bona fide rights that may have lawfully accrued in the mean time. If the citizens of Brownsville, as holders of labors, acquired a right of perpetual occupancy at a certain rent or any higher degree of title, they could not be deprived of it. And this was probably what was intended to be expressed in the charter of 1853.

The question whether any rights of beneficial ownership, requiring the constitution of a trust for their support, existed in the citizens of Brownsville as a body by virtue of the charter of 1850, after its repeal, was brought before the supreme court of Texas in the case of Basse v. Fontleroy, 11 Texas, 698, and the court held that all lands held
80 by the city for public purposes were liable to be disposed of by the legislature; and that all grants and trusts created by the first charter were extinguished by its repeal. But the individual citizens as

such might have rights which were valuable, and which ought to be restored to them. This is all that was done by the new charter of 1853.

We are of opinion, therefore, that the State did not convey any property to the present corporation of Brownsville, even if it had any to convey, but we are also of opinion that the State had nothing to convey as derived from the corporation of Matamoras.

The conclusion follows that the defendants hold the title of the property in dispute under the Garza grants of 1781, duly confirmed by the acts of 1850.

The plea of res judicata we do not think can be sustained. It is true that Basse & Hord, the parties under whom the heirs of Stillman and Hale claim, brought suit for the same property now defended for by them against the city of Brownsville, in 1854, and a decision was rendered in favor of the city by dismissing the suit on the 27th of June, 1872, and no suit was brought by Basse & Hord, or the defendants Hillman and Hale, within the year required by the statute of Texas. But they have a sufficient excuse for not bringing it. The city, within ten days after the termination of that suit, instituted this suit against them
81 for the self same property.

In our judgment this dispenses with the necessity of the defendants' bringing a suit. The reason for it ceases. The object of the statute is, if parties are not satisfied with the result of one action, impel them to relitigate the matter without unnecessary delay, and a year is fixed for the purpose. But the defendant in the former suit, the successful party therein, itself commenced the relitigation almost immediately. The object of the statute was answered, and it would be promoting unnecessary & vexatious litigation to require the present defendants to bring suit also. And even if a plea of reconvention were necessary in order to satisfy the equity of the statute, we think that such a plea has been put in, not full and clear at first, but rendered so by amendment afterwards, which was within the discretion of the court.

As to the pleas of prescription, we think that, under the circumstances of this case, the mixed possession that has ever existed, the continued contest of the parties, the pending of litigation from 1854 to the present time, and the absence of actual possession by each party over a great portion of the property, no prescription can be claimed, and the decision of the case must rest on the documentary title.

Our decision is in favor of the defendants, as follows:

We find against both parties, in fact, on the issue of prescription.

82 And as a matter of law we find for the defendants on the question of title, namely, that the defendants are respectively seized in fee of the respective parts and portions of the lands claimed by the petition, for which they respectively defend, and that the plaintiff is not so seized; and as a consequence of this finding, we also find the defendants not guilty, as they have severally pleaded—subject, however, to the disclaimer filed by the defendants, the lands and premises claimed not being embraced in this judgment.

And we give judgment for the defendants, that they severally recover the said lands in the parts and portions respectively claimed by them in the pleadings in the cause, and that as to the action and de-

mand of the plaintiff they go thereof without day and recover their costs.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.
AMOS MORRILL, *Dist. Judge.*

The foregoing opinion endorsed: Filed June 6th, '76. C. Dart, clerk.

Judgment from minutes, vol. 3, 527.

May term, 1876, June 6th, 1876. Circuit court of the United States, eastern district of Texas.

CITY OF BROWNSVILLE *v.* MARIA JOSEFA CAVAZOS, CHARLES STILLMAN, William G. Hale, and John Treanor (the said Stillman & Hale having deceased, and their 83 heirs being substituted).	On trespass to try title.

On trial before Justice Bradley and Judge Morrill, commencing May 30th, 1876, and ending June 5th, 1876.

Maxan, Powers, and Waul for plaintiff; James R. Cox, Jack & Ballinger for defendants.

Opinion, finding, and judgment of the court, a jury being waived by stipulation in writing filed.

The property in question is within the boundary lines of a tract of fifty-nine and one-half leagues, called the Espiritu Santo tract, granted by the Spanish Government to one de la Garza in 1781, which grant was recognized by the legislature of the State of Texas by the "act to relinquish the right of the State to certain lands therein named," approved February 10th, 1852. It is conceded by both parties that for several years prior and up to the year 1826 one Doña Maria Francisca Cavazos was seized of the Espiritu Santo tract (including the lands in dispute) by regular deraignment of title under said grant. Madam Cavazos died in 1835, and devised the Espiritu Santo tract to three parties, one of whom was Doña Maria Josefa Cavazos, who, by an act of partition between the parties, became seized of that portion of the tract on which the premises in dispute are situated. A portion of these premises she subsequently conveyed to other persons, under whom the other defendants claim by regular deraignment of title, so that the defendants
84 have shown title to the land in dispute for the several parts which they respectively claim, unless the plaintiff can show a better title. This the plaintiff, the city of Brownsville, attempts to do.

The title set up by the city is a title by a proceeding for expropriation, by which, as they allege, the premises in dispute were expropriated as part of the ejidos (or town lands) of the city of Matamoras in 1826 and 1827.

To explain the nature of this claim it is necessary to advert to the fact that, by the Spanish laws which were in operation in Mexico, every corporate town became, by virtue of the act of incorporation, entitled to lay out and appropriate for the public use of the town, for streets, squares, building sites, and small holdings or labors for the people, a town tract of four square leagues, to be two leagues square when admissible.

Mexico separated from Spain about the year 1821, and the several States adopted constitutions of government, retaining, however, the Spanish laws as far as they were applicable to their new circumstances. Amongst the rest, the state of Tamaulipas, which comprised the territory on both sides of the Rio Grande, adopted a constitution in 1825, by the XIIIth article of which it was declared as follows: "Neither the congress nor any other authority shall be able to take the property, even that of the least importance, of any private individual. When it shall become necessary for an object of a common recognized utility to
85 take the property of any person, he shall first be compensated upon the examination of arbiters appointed by the government of the State and the interested party." This was also substantially the old Spanish law.

On the 28th of January, 1826, the congress of Tamaulipas constituted Matamoras (before called Refugio) a town, with power to take the necessary proceedings to ascertain the title to the land on which it was established, causing indemnification to be made agreeably to law, if it should belong to an individual.

The town council in due time proceeded to take measures to lay out the ejidos. They caused the land-owners to be notified and a survey to be made in August, 1826.

This survey took for its central point the centre of the public square in Matamoras, and the ejidos was made to embrace a tract two leagues square, extending one league north, one league south, one league east, and one league west of this point. It was thus made to extend across the Rio Grande, and to include about a league and a half of the land of Madam Cavazos, which league and a half is the present site of the city of Brownsville, and is the property in dispute. The survey having been made, the next thing to be done to condemn the land for the ejidos, or town lands, was to make the required indemnification to the owner, before which was done, according to the constitution, the property could not be taken by the city.

But here a difficulty occurred. The indemnification must be made upon the examination of arbiters appointed by the government of
86 the state and interested party. But Madam Cavazos refused to co-operate in the matter. She opposed the whole proceeding. It took from her her best land along the river front, and even took the farm which she had under her private cultivation. Various efforts were made to compose the difficulty, but in vain; at last the state congress, on the 15th of October, 1827, made a decree to the following effect:

"The government, in the use of its powers, will see that the civil authorities of Matamoras compel Doña Rita Giron (another contestant) and Doña Francisca Cavazos to obey the constitution and laws. If, being notified the second and third time, those ladies refuse to appoint arbiters for the corresponding indemnification of the lands which are to be taken for ejidos, the ayuntamiento will proceed to their occupation and survey without citing them further. Should the parties or their heirs hereafter ask for the indemnification of their lands, and be willing to name an arbiter as required in the 13th article of the constitution of this State, a new measurement shall be made, if they desire it, and the land they asked for before shall be given them as a recompense. This resolution shall be communicated to the government, in order that, acting in accordance with it in the present case, it may serve as a general rule in all others that may occur, until a basis to be observed may be established by law."

The effect of this decree is much controverted by the parties.
87 The plaintiffs insist that it was an adjudication in rem for the expropriation of the lands without compensation to the owners if they continued recalcitrant, reserving to them, however, a right to obtain compensation at any future time by applying therefor. The defendants insist that it merely authorized a user of the lands without expropriation, until the parties chose to accept the terms proposed by the government.

The validity of this decree we are not at liberty to question. It was an act of the highest tribunal known to the laws of Tamaulipas, a tribunal invested with supreme judicial as well as legislative authority. It does not belong to us to say that its acts or decrees were unconstitutional.

So far as we are concerned, it was sole judge of its powers, and its acts must be accepted by us as having undoubted validity.

The true construction and effect of the decree are alone to be sought by us. To arrive at these, we are authorized to look at all the circumstances of the case, the conduct of the parties, the Government's own views on the subject, and any other light within our reach.

The most obvious view of the question as it first presented itself to my own mind was this: That as the land-owner refused to avail herself of the privilege accorded to her by the constitution, the legislature could authorize the taking of the land without compliance with the condition of first making compensation, and that this was what the legisla-
88 ture did. That the taking which ensued was followed by all the incidental rights and transfer of title which accompany a taking in any case; in other words, that the expropriation was complete, but the party had a reserved right to claim indemnification whenever she chose to ask for it and comply with the constitutional requisition.

The district judge took a different view, and held that the occupation authorized by the decree was a mere usufructuary one, liable to be terminated in case of failure to make due compensation when it should be asked for, and not ripening into title until such compensation should be made. The language of the decree compared with that of the Constitution lends force to this view. The word used in the Constitution is property (propriedad); the word use' in the decree is occupation (ocupacion). These words seem to have about the same distinction in the Spanish law as in the English—one indicates title, the other mere possession and use—occupation is possession. It confers title where no owner existed before, or where the former owner had abandoned the thing occupied. But where an ownership or dominion already exists, it amounts only to possession and use.

The city authorities of Matamoras proceeded to treat the land as ejidos, granting a large number of labors, or town-holdings, in it; but the question of indemnity would not be laid. It was agitated
89 until the death of Madam Cavazos in 1835, and afterwards until the United States took possession of the country, in 1848, up to which period the State of Tamaulipas continued to exercise de facto jurisdiction over the country.

In 1831 the matter was brought to the attention of the general government again, which, on the 29th of June in that year, made an order that the Ayuntamiento of Matamoras should give information respecting the state of affairs of the ejidos, and directing the first alcalde to order the owners of the land to present themselves at the capitol (Victoria), in person or through an agent, within a reasonable time to be named, so that hearing the attorney-general of finance, the indemnification to all might be agreed upon. In 1834 this order was served by the

city authorities on the owners a second time, notifying them that this would be the last notice, and if they did not appear they would suffer the damages of the law for interposing obstacles in so important an affair. All this seems to indicate on the part of the city a conviction that its title was not entirely beyond dispute, and needed further support; and on the part of the government a like view of the case.

The answer of Madam Cavazos to this summons is given in evidence. She was told to appear before the supreme government and present the titles of the property, in order that the dimensions of the ejidos lands which affected her might be determined. She declined to
90 go or send, giving as an excuse that she was too old; but said, in substance, that she would receive her indemnification in money, and would submit to whatever the government might order. This is her last appearance on the scene. No evidence is given to show that any money was ever paid, or that any mode of estimating the amount due, different from that required by the constitution, was ever devised by the government.

The defendants show some supplementary proceedings taken in 1841 for a resurvey of the ejidos, in which the Cavazos family were represented, and it seems acquiesced. But the survey was not satisfactory to the town authorities, and they refused to receive it, although they had ordered it.

The defendant offers in evidence, also, certain proceedings which took place before the State congress in September and October, 1848. The nature and object of these proceedings were not distinctly explained to us during the reading of the evidence, and we hold them under advisement. We have since examined them, and find them to be this:

After the treaty of Gaudalupe Hidalgo (which was signed May 30, 1848), the Mexican authorities yielded all claim to jurisdiction east of the Rio Grande. Thereupon the city authorities of Matamoras proposed to sell out to private parties, speculators from the United States, the ejidos of the city on the Texas side. John Treanor, one of the now defendants, representing the Cavazos family, and particularly Dóña
91 Josefa, one of the defendants, applied to the general government for an injunction (or what is equivalent thereto) to prohibit the ayuntamiento from making any such sale, on the ground that it had no right to do this, and it would injure the owners. The ayuntamiento put in an answer, setting up the claim of the city.

The matter was presented to the congress, who referred it to a committee, and that committee made an elaborate and able report, in which they take the ground that as compensation had never been made (which they held to be an indispensable requisite), the right of property was never perfected, and that as no expropriation could now be made in consequence of the change of government, the original owners were entitled to receive back their lands, and were not confined to compensation; that alienation of the lands would not be a public use, but private speculation.

They say "the right of expropriation has another and more noble origin. Its object is not to increase the receipts of the public revenues, but to provide for the well-being of the community." They add that it might also produce complications with the Government of the United States of the North, who would, perhaps, justly contend that property belonging to a municipal body must be considered as public property. Hence the committee recommended the congress to adopt a resolution to the effect that, it being provided by the 13th article of the former

constitution, and the 71st article of the present, that in no case
92 can expropriation be made without previous compensation, and this not having been made as to the ejidos, situated on the left bank of the Bravo, the ayuntamiento of Matamoras has not acquired a right of property in that portion, and consequently its former owners preserve it. This resolution was adopted by the congress on the 20th of October, 1848.

We reject these proceedings as evidence because the congress of Tamaulipas had ceased to have any jurisdiction over the land in question. But as an authority on the law of that State, and as bearing upon the construction and effect of the decree of October 15th, 1827, it possesses the highest value. The congress had jurisdiction of the parties before it, and of the subject-matter.

The city of Matamoras proposed to make a sale and conveyance which would have greatly injured and embarrassed the owners of the Cavazos title, by casting a cloud upon it, and, perhaps, inciting litigation. They applied to the supreme government for relief, and that government decided against Matamoras. It is a decision of the legal question on a case properly made, and as such it is worthy of great respect at our hands. In the light of this decision and of the other transactions which took place after the decree of October 15th, 1827, we are brought to the conclusion that the decree and the proceedings under it
did not have the effect to transfer to the city of Matamoras the
93 title to the lands. But if we are wrong in this conclusion, there is another point that is fatal to the claim of the plaintiff. As a corporation the existence of the plaintiff commenced with the act of incorporation passed February 7th, 1853, and it has never received, from any source, the title of Matamoras, if such title had been outstanding; and hence, not having any title of its own to stand on, it must fail in this action. The only title on which it relies is its charter; but that confers none. It confirms to the citizens of Brownsville, as incorporated by the act, all property, rights in action, and claims to property which were held, owned, occupied, and enjoyed by the citizens of said city under the previous charter of 1850, which had been repealed; but it confirms nothing and grants nothing to the corporation of Brownsville. The first charter did. It relinquished to the corporation all the right, title, and interest of the State in and to the land that was owned by the town of Matamoras on the 19th of December, 1836. But this charter was repealed on the first of March, 1852; and with it the estate, if any was acquired, reverted to the State of Texas.

But on the supposition that on the 19th of December, 1836, there was an outstanding estate in the city of Matamoras, in virtue of the expropriation proceedings, that estate, according to the weight of the later authorities, would revert to the original owners of the land, when the purpose of the expropriation became incapable of further accomplishment, or ceased to exist. Expropriation is a seizure of so much
94 of the owner's property as is necessary for the public purpose. A seizure of more, by adverse proceedings, would be an abuse of the power. It follows, therefore, that when the purpose is accomplished, or has ceased to exist, the residue of the property belongs to the original owner. But this revertee must be subject to any bona fide rights that may have lawfully accrued in the mean time. If the citizens of Brownsville as holders of labors acquired a right of perpetual occupancy at a certain rent, or any higher degree of title, they could not be deprived of it. And this was, probably, what was intended to be expressed in the charter of 1853.

The question whether any rights of beneficial ownership, requiring the constitution of a trust for their support, existed in the citizens of Brownsville as a body, by virtue of the charter of 1850, after its repeal, was brought before the supreme court of Texas in the case of Basse v. Fontleroy, (11 Texas, 698,) and the court held that all lands held by the city for public purposes were liable to be disposed of by the legislature; and that all grants and trusts created by the first charter were extinguished by its repeal. But the individual citizens, as such, might have rights which were valuable, and which ought to be restored to them. This is all that was done by the new charter of 1853.

We are of opinion, therefore, that the State did not convey any property to the present corporation of Brownsville, even if it had any to convey; but we are also of opinion that the State had nothing to
95 convey as derived from the corporation of Matamoras. The conclusion follows that the defendants hold the title of the property in dispute under the Garza grant of 1781, duly confirmed by the act of 1852.

The plea of res judicata we do not think can be sustained. It is true that Basse & Hord, the parties under whom the heirs of Stillman and Hale claim, brought suit for the same property now defended for by them against the city of Brownsville in 1854, and a decision was rendered in favor of the city by dismissing the suit on the 27th of June, 1872; and no suit was brought by Basse & Hord, or the defendants Stillman & Hale, within the year required by the statute of Texas. But they have a sufficient excuse for not bringing it. The city, within ten days after the termination of that suit, instituted this suit against them for the selfsame property.

In our judgment this dispenses with the necessity of the defendants bringing a suit. The reason for it ceases. The object of the statute is, if parties are not satisfied with the result of one action, to compel them to relitigate the matter without unnecessary delay, and a year is fixed for the purpose. But the defendants in the former suit, the successful party therein, itself commenced the relitigation almost immediately. The object of the statute was answered, and it would be promoting unnecessary & vexatious litigation to require the present defendants to bring a suit also.

And even if a plea of reconvention were necessary in order to satisfy the equity of the statute, we think that such a plea has been
96 put in—not full and clear at first, but rendered so by amendment afterwards—which was within the discretion of the court.

As to the plea of prescription, we think that under the circumstances of the case—the mixed possession that has ever existed, the continued contract of the parties, the pending of litigation from 1854 to the present time, and the absence of actual possession by either party over a great portion of the property—no prescription can be claimed, and the decision of the case must rest on the documentary title.

Our decision is in favor of the defendants as follows:

We find against both parties, in fact, on the issues of prescription.

And, as a matter of law, we find for the defendants on the question of title, namely, that the defendants are respectively seized in fee of the respective parts and portions of the lands claimed by the petition, for which they respectively defend, and that the plaintiff is not so seized; and as a consequence of this finding we also find the defendants not guilty, as they have severally pleaded; subject, however, to the disclaimer filed by the defendants, the lands and premises disclaimed not being embraced in this judgment.

And we give judgment for the defendants, that they severally recover the said lands in the parts and portions respectively claimed by them in the pleadings in the cause, and that as to the action and de-
97 mand of the plaintiff, they go thereof without day and recover their costs.

(Signed) JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

(Signed) AMOS MORRILL,
Dist. Judge.

Wherefore it is considered by the courts that the plaintiff, the City of Brownsville, take nothing by its suit and go hence without day, and that the defendants in this suit do have and recover of and from the said plaintiff, the City of Brownsville, all the lands and premises in the answer and reconvention of the defendants set forth and claimed in this suit, not including herein the lands and premises as to which the said defendants disclaim title in their pleadings in this cause, to wit, the Market-house Square and improvements thereon, the streets, alleys, and lanes of the said city, the Washington Square, the public cemeteries, and all other of said lands which have been conveyed by Elisha Basse and Robert H. Hord, and other the grantors of the said defendants herein, to the plaintiff in this cause, and that the process of this court shall issue to cause said defendants to have possession of said lands and premises so recovered by them, and that the said defendants do have and recover of and from the said plaintiff all their costs in this behalf expended, for which execution shall issue.

98 *Statement of facts by the court.*

Circuit court of the United States, fifth circuit, eastern district of Texas.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS. } C. L. No. 887.

Be it remembered that on the trial of the above-entitled cause, the plaintiff, to maintain the issue on its part, introduced and read in evidence the following documents, duly proven and authenticated:

99 *Map.—Filed May* 31, '76 (*P. I.*)

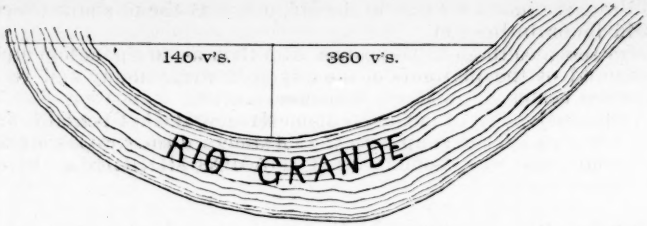
(Here follows map marked page 99.)

100 *Statement of facts continued.—Field notes of George Lyons' survey of Ejidos of Brownsville, October* 5, 1850.—*Filed May* 31*st*, 1376. (P. 2.)

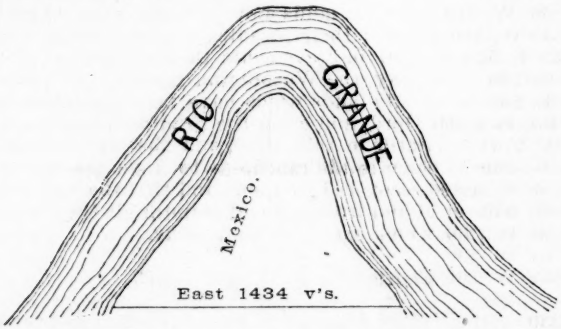
Order of city council, July 11th, 1850, for this survey.

Survey of the corporate limits of the city of Brownsville, Texas:

Beginning at the northwest corner of the ejidos of Matamoras, as per ...y of Dr. Lewis Belgnder, surveyor for the city of Matamoras, by ...t, thence east with the north boundary of the corporate limits of M... ... 410 varas to Rio Grande, 599 varas cross the same to lands within the corporate limits of Brownsville, 1,045 varas across bend thus:



set post, whence a mesquit 3 inches in diameter, marked +, bears S. 82° W. 25 v's; also mesquit 1 inch in diameter, marked +, bears N. 80° E. 18 varas; 2,479 varas across bend thus:



set post, whence Gresno or Ash, 9 inches in diameter, marked +, bears S. 52° E. 31 v's; also, a tipoquage, marked +, bears E. 8 v's, 3084 v's to brickyard and labor of Antonio Garza, 3,260 v's to a roading from Browns' to Santa Rita, 3,920 varas to a labor.

4,470 varas cross the same.
4,740 " to a resaca.
4,880 " cross same.
5,109 " to point one league of Plaza de Hidalgo of Matamoras.

101 5,230 varas to resacca.
5,370 " cross same.
5,690 " to resacca.
5,860 " cross same.
6,680 " to road leading from Point Isabel to Brownsville.

10,169 varas. Set a square post for northeast corner of the Ejidos, whence a mesquit 4 inches in diameter marked + bears north 56° E. 12 varas, also mesquit 12 inches in diameter, marked ++, bears S. 11° W. 30 varas.

Thence south with the east boundary of the Ejidos 50 varas to road leading from Brownsville to Brazos San Jago 3940 varas to road leading from Brownsville to the mouth of the Rio Grande.

4,040 varas passed 9 varas left of a mesquit 12 inches in diameter marked +.

4,090 varas to the house Pablo Vicrial on line.

4,130 varas passed 6 varas to the right of an ebony 9 inches in diameter, marked +.

4,280 varas passed 6 varas to the left of the house of Pablo Martinez, at Rancho Santa Rosalia.

4,600 varas, to the left bank of the Rio Grande, set post for the S. E. corner of the corporate limits of the city of Brownsville.

Whence willow, 12 inches in diameter, marked +, bears S. 85° E. 128 v'r's; also, an ebony 12 inches in diameter, marked +, bears N. 52½ W. 130 v'r's. Thence up with the meanders of the Rio Grande for the
102 south and west boundaries of the corporate limits of the city of Brownsville.

S. 88° W. 382 varas.
S. 5° W. 1,090 "
S. 19° 30′ E. 380 "
South 250 "
S. 75° W. 180 "
N. 53° 30′ W. 540 "
N. 21° 30 W. 370 "
N. 5° 15′ E. 510 "
N. 27° E. 140 "
N. 18° E. 140 "
N. 26° 45′ E. 1,000 "
N. 5° W. 270 "
N. 22° W. 240 " to the rancho de los Falcones.
S. 30° 30′ W. 470 "
S. 57° W. 110 "
S. 25° 30′ W. 860 "
S. 49° 15′ W. 390 "
S. 74° 45′ W. 100 "
S. 61° W. 50 "
West 230 "
N. 50° W. 190 "
N. 25° 30′ E. 200 "
N. 46° 30′ E. 850 " to rancho de los Tomates.
N. 51° 15′ W. 480 "
N. 67° 30′ W. 310 "
S. 41° W. 1,010 "
S. 57° 45′ W. 570 varas.
N. 53° W. 260 "
N. 14° 30′ W. 160 "
N. 3° 15′ E. 420 "
N. 2° W. 500 "
N. 19° W. 380 " to Brownsville.
103 N. 49 30′ W. 390 varas along levee.
S. 36° 15′ W. 1,220 "
S. 25° 30′ W. 460 "
S. 50° W. 130 "
S. 85° W. 460 " to Freeport.
S. 85° 45′ W. 230 "
N. 11° E. 330 "
N. 42° E. 410 "
N. 21° E. 660 "
N. 2° 30′ W. 370 "
N. 34° 15′ W. 370 "
N. 80° 30 W. 560 "
S. 42° W. 1,180 "
N. 81° 30′ W. 290 "

N. 41° 45′ W. 260 varas.
N. 21° W. 110 "
North 180 "
N. 10° E. 300 "
N. 2° E. 320 "
N. 4° 15′ W. 600 "
N. 2° W. 830 "
N. 7° E. 200 "

To the north boundary of the corporate limits of the city of Brownsville at point 7,690 varas west from the n. e. corner of the Ejidos or N. E. corner of the corporate limits of the city of Brownsville, containing $4{,}653\frac{88}{100}$ acres.

GEORGE LYON,
City Surveyor by Contract.

BROWNSVILLE, *Sept. 19th*, 1850.

I, George Lyon, surveyor for the city of Brownsville by contract,
104 do hereby solemnly swear that the foregoing field notes was made by me in the month of July and August, 1850, and that the lines, boundaries and corners of the same, together with the marks natural and artificial, are truly described therein.

GEORGE LYON.

The foregoing affidavit was sworn and subscribed to before me this the 5th day of October, A. D. 1850.

E. D. KATTMAN,
Jus. of Peace, Cameron County, Texas.

Filed in the city council, March 6th, 1854.

Filed for record August the first, A. D. 1854, at 10 o'clock a. m., and recorded on same.

S. E. LANGDON,
Clk C. Court C. County.
By B. H. FRY, *Deputy.*

THE STATE OF TEXAS,
County of Cameron:

I, Robert B. Foster, clerk of the district court in and for the county of Cameron, 15th judicial district, State of Texas, hereby certify the foregoing to be a true and correct copy of field-notes of a survey of the city of Brownsville as found of record in book F, pages 156, 157, 158, and 159, records of Cameron County, Texas.

In testimony whereof, witness my hand and seal of court at office in Brownsville, Texas, this eighteenth day of September, anno
105 Domin. eighteen hundred and seventy-three.

[SEAL.]

R. B. FOSTER,
Clerk District Court Cam. Co., Tex.,
By W. E. LOOMIS,
Deputy.

Statement of facts continued. An act to incorporate the city of Brownsville. (*P.* 5.)

AN ACT to incorporate the city of Brownsville.

SECTION 1. Be it enacted by the legislature of the State of Texas, That the citizens of Cameron County, in the State of Texas, residing within the limits of that section of territory situated and lying on the left margin of the Rio Grande, in the county of Cameron aforesaid, formerly a part of the town tract of four leagues of land (ejidos) of the city of Matamoras, in the Republic of Mexico, be, and they are hereby declared a body politic and corporate, by the name and title of the "City of Brownsville," and by that name may sue and be sued, implead and be impleaded in all courts and in all actions and matters whatsoever, and by the same name may, by deed of gift, grant or purchase, hold and dispose of any estate, real or personal, within the limits of said city, for the use of the corporation, and may have a common seal, which they may alter and change at their pleasure, and all the
106 right, title and interest in the State of Texas in and to all the land included within said tract, that was owned by the town of Matamoras, on the 19th day of December, 1836, shall be, and is hereby relinquished to the corporation of the city of Brownsville and their successors in office in trust for the use and benefit of said city, provided this act shall not impair private rights.

SEC. 2. Be it further enacted, That said corporation shall have power and authority to sell and alienate any portion of the lands owned by the said corporation, and appropriate the proceeds thereof to the erection of a substantial jail and court-house for the use of the county of Cameron, and the balance shall be appropriated for the purpose of education within said city, and for no other purposes; provided that no part of said land shall be sold or alienated until notice of such sale or alienation be given by publishing the same in some newspaper, printed in said city of Brownsville, for at least sixty days previous to the day of sale or alienation of said land.

SEC. 3. Be it further enacted, That there shall be the following officers for said city, to wit: one mayor, nine aldermen, forming the
107 city council, one of whom shall be chosen to preside; one treasurer, one city marshal, and as many subordinate officers not herein mentioned, for preserving the peace and well ordering the affairs of the city, as the city council shall direct and the mayor approve; the city council shall be the judges of the validity of the selection of all officers chosen under this act. The treasurer and city marshal shall give good and sufficient security, in such form, manner and amount as the city council shall direct, subject to the approval of the mayor and aldermen. After the first election, the mayor and aldermen shall be elected for one year, and all other officers elected or appointed under this charter shall hold their officers for one year, unless sooner removed, and shall, before entering upon the discharge of the duties of their respective offices, respectively take the oath required by the constitution of the State of Texas.

SEC. 4. Be it further enacted, That the city council shall have full power to make and pass such by-laws and ordinances as they shall deem necessary to maintain the cleanliness and salubrity of said city; to ensure the safety and convenience of passing in the streets, squares,
108 ways, alleys; to fix the squaring and prevent any encroachment or other undertakings on the same; to determine the comple-

tions and dimensions in the said streets and ways, at the cost of the proprietors of houses, lands, or neighboring lots; to regulate the wharves, levies, or landing-places along the bank of the river; to erect a hospital for the sick and to appoint a physician for the same; to provide for the maintenance of indigent citizens, unable to support themselves; to establish and regulate such common schools as they may direct; to borrow money for the use of the corporation; to organize and regulate a fire department, for the purpose of extinguishing and preventing conflagrations; to establish and determine fire limits in said city; to prevent the storage of gunpowder within the limits of said city in such quantities as to endanger the public safety; to establish an active system of inspection over the conduct of slaves; to provide for the lighting of streets; to permit or forbid theatres, shows, or other public amusements; to close the play-houses or places for shows or exhibitions whenever the preservation of order, public safety or tranquility shall require it; to establish one or more market-places; to determine
109 the mode of inspection of all eatables offered for sale in the market or other public places; to regulate everything relative to butchers, bakers, tavern-keepers, tippling-houses, bowling-saloons, billiards, draymen, horse-drivers, water-carriers, hucksters, hawkers and pedlers, and slaves employed as day laborers; to fix the salary of draymen, horse-drivers, and water-carriers, and to make other regulations which may contribute to the better administration of the affairs of such corporation, as well as for the maintenance of the public tranquility and safety of said city.

SEC. 5. Be it further enacted, That it shall be the duty of the mayor to convene the council whenever he shall deem it necessary, and to recommend such measures as he may deem proper for the public weal; to nominate for the council such subordinate officers as may be authorized to be appointed by said council; to grant licenses to such persons as the council may direct; to approve or disapprove all ordinances, by-laws, and regulations which said council may pass; and for this the counsel shall cause all acts, ordinances, by-laws, and resolutions, as soon as they shall be passed, to be placed before said mayor, and the
110 said mayor shall approve or disapprove the same within three days after the same shall be so placed before him. If the mayor approves, he shall return the same approved to the council; if he disapproves, he shall return the act, ordinance, by-law, or resolution, with the reason of his disapproval, to the council, and the said act shall not thereafter become a valid act unless after its return (it) be read, together with the disapproval that acompanies the said act, ordinance, by-law or resolution, and then be passed by a vote of two-thirds of said council. If the mayor do not return any act, ordinance, by-law, or resolution within three days, as aforesaid, the same shall be deemed approved.

SEC. 6. Be it further enacted, That a majority of the whole number of aldermen councils elected shall constitute a quorum for transacting business, except in case a tax is to be levied, when a vote of two-thirds shall be required.

SEC. 7. Be it enacted, That the city council of the city of Brownsville shall have and exercise the power of laying and levying taxes upon all subjects of taxation within their corporate limits upon which a tax
111 may be levied by the State as may be deemed necessary; provided, said tax shall not exceed in any one year one-half of the amount of the tax levied by the State upon such subjects of taxatson; and provided, also, that such tax shall be apportioned in the same manner as the State tax, and the city treasurer or collector of taxes shall have the same

power to enforce the collection of such taxes as may be imposed in said city as the assessor and collector of each county has for the collection of the State and county taxes.

SEC. 8. Be it further enacted, That whenever it may be deemed necessary to open, alter, close or change any public road or street in said city under the provisions of this act, it shall be the duty of the city council to give thirty days' notice by publication in one or more newspapers in the city of Brownsville, in the English and Spanish languages, requiring all persons having objections to the opening, altering, closing or changing of such road or street, to make their objections in writing on or before the expiration of said thirty days' notice, and if after such objections have been received and considered, it shall appear to the city council that such opening, altering, or closing or changing of such street or road is necessary, they shall proceed to appoint viewers, whose numbers, qualifications, and duties shall be the same as are now laid
112 down by the law regulating roads; and upon receiving their report, the city council shall proceed to open, alter, close or change said public road or street according to the powers and restrictions conferred and imposed by this act.

SEC. 9. Be it further enacted, That the first election of city officers under this charter shall be held as soon as may be after the passage of this act, by the chief justice of the county of Cameron issuing his writs to two persons residing in the limits of this corporation, directing them to hold polls at two different places in said corporation, and to act as presiding officers; to appoint judges and clerks to assist in the election, who shall be sworn to faithfully conduct the election according to the provisions of this act. And said presiding officers shall post up notices (in) each (ward) in three public places within said city limits at least seven days before the election, of the time and places of holding the same. The polls for this purpose shall be opened at 9 o'clock a. m. and close at 4 o'clock p. m., allowing an adjournment of one hour from noon, and after counting the votes in the presence of the judges, shall seal up true lists of the same and deliver them to the chief justice aforesaid within three days after such election has been holden, and said chief justice shall thereupon give a certificate to the
113 officers elected, who shall be empowered thereby to enter upon the duties of their respective offices according to the provisions of this act, and that from and after the first election all elections for charter officers, except to fill vacancies, shall be holden on the second Monday of December annually; and it shall devolve upon the city council to decide upon the time and places of keeping open the polls, always giving ten days' notice of each election by posting advertisements in each ward, and by publication in English and Spanish languages, in at least one newspaper printed in the city of Brownsville, and in case of vacancies of any of the officers which are filled by election under this act, the city council shall order an election in the manner aforesaid, to fill such vacancy, and the officers first elected under this act shall hold their offices until the first Monday of January, eighteen hundred and fifty-one, or until their successors are duly qualified, and the aldermen or city council chosen at the first election shall lay off the city into three wards, containing as nearly as may be an equal number of voters in each ward; and each ward shall at every annual election hereafter be entitled to elect three aldermen, and the three persons in each ward receiving the highest number of votes for aldermen shall be elected.

114 SEC. 10. Be it further enacted, That the city council, subject to

the approval of the mayor, shall determine the compensation of the mayor, treasurer, city marshal, and all subordinate officers.

SEC. 11. Be it further enacted, That no election shall be contested by any person, unless within ten days after holding the same; and the person intending to contest shall cause the person having a certificate of election to be notified thereof at least three days before the time he intends to appear and contest the election, and shall cause a statement in writing to be delivered to him by the city marshal or his deputy, stating the grounds upon which he relies to sustain the contest. And in case the candidate elect cannot be found, then the notice and statement to be left at his usual place of residence. No ex parte testimony shall be received as evidence in any contested election, without the consent of the opposite party; and in all cases of contested elections, the mayor and city council shall have power to settle all questions relative to the legality and number of votes thereon, and decide upon the candidate entitled to a certificate of election.

SEC. 12. Be it further enacted, That no person shall be eligible to any office in this corporation, or entitled to vote for city officers, unless he be a citizen of this State, and shall have resided in the corporate limits of the city for at least six months next preceding the election.

SEC. 13. Be it further enacted, That this act take effect and be in force from and after its passage.

Approved January 24, 1850.

THE STATE OF TEXAS,
Department of State:

I, James P. Newcomb, secretary of state for the State of Texas, certify that the foregoing eight printed pages contain a true and correct copy of an act entitled "An act to incorporate the city of Brownsville," taken from the original in the department of state, with which it has been carefully compared.

In testimony whereof I have hereunto signed my name and have caused the seal of the State of Texas to be affixed, at the city of Austin, this 21st day of May, A. D. 1873.

[SEAL.] JAMES P. NEWCOMB,
Secretary of State.

Statement of facts continued.—An act to incorporate the city of Brownsville. (*P.* 6.)

An act to incorporate the city of Brownsville.

SEC. 1. Be it enacted by the legislature of the State of Texas, That the citizens of Cameron County, in the State of Texas, residing within the limits of that section of territory situated and lying on the left margin of the Rio Grande, in the county of Cameron, aforesaid, formerly a part of the town tract of four leagues of land (ejidos) of the city of Matamoras, in the Republic of Mexico, be, and they are hereby, declared a body politic and corporate by the name and title of "the city of Brownsville," and by that name may sue and be sued, implead and be impleaded, in all courts and in all actions and matters whatsoever, and by the same name may by deed or gift, grant or purchase, hold and dispose of any estate, real or personal, within the limits of said city, for the use of the corporation, and may have a common seal, which they may alter and change at pleasure.

SEC. 2. That it shall be the duty of the citizens of said corporation to elect a mayor, nine aldermen, a marshall, treasurer, secretary, and an assessor and collector of taxes.

SEC. 3. The mayor, with a majority of said aldermen, shall constitute a quorum for the transaction of business. They shall form the city council, and the mayor shall preside at their meetings.

SEC. 4. The treasurer, marshall, and assessor and collector of taxes shall give bond to the mayor of said city in such sum as the said council shall determine, which bond shall be for the faithful performance of their respective duties as they shall be from time to time defined by said council; and if either said treasurer, marshall, or assessor and
117 collector of taxes, shall refuse or neglect to give bond as required by said council within such reasonable time as they may be required by said council, such treasurer, marshal, or assessor and collector of taxes may be removed, and his office declared by said council to be vacant, and a new election ordered to supply such vacancy. It shall be the duty of the marshall to attend upon the council and execute all process to him lawfully directed by the mayor, and generally to do and perform such duties as are performed by constables in courts of justices of the peace.

SEC. 5. That the city council shall have full power to make and pass such by-laws and ordinances as they shall deem necessary to maintain the cleanliness and salubrity of said city; to insure the safety and convenience of passing in the streets, squares, and alleys; to establish and regulate such common schools as they may direct; to organize and regulate a fire department for the purpose of extinguishing and preventing conflagrations; to prevent the storage of powder within the limits of said city; to establish a system of police for the maintainance of public order and tranquility; to permit theatres, shows, or other public amusements under such regulations and restrictions as they may direct; to establish one or more market places, and to regulate the same; to take charge and superintendence of all streets, roads, and alleys, and ways, appoint the necessary overseers for the same, and to enforce labor thereupon in the same manner and with the same effect as such author-
118 ity is now authorized by the county courts; to enact all ordinances to carry this act into effect, and to fix such penalties thereto as they may determine; to appoint all subordinate officers necessary; to grant licenses to all billiard tables, coffee houses, groceries, or any place of amusement in said city, and to determine the amount to be paid for such licenses; to have and exercise the power of laying, levying, and collecting taxes upon all subjects of taxation within their corporate limits upon which a tax may be levied by the State, provided said tax shall not exceed in any one year one-fourth of the amount of the tax levied by the State upon such subjects of taxation, and to divide said city into three wards; and after the first election there shall be elected three aldermen for each ward.

SEC. 6. The mayor shall have the power and concurrent jurisdiction of a justice of the peace over all such criminal matters as may arise within said corporate limits, and which by existing laws are cognizable before a justice of the peace. He shall have jurisdiction over all penalties for violation of the ordinances of said city, and shall have the right to issue process, hear and determine suits arising from violations of city ordinances, and to enforce collection of judgments rendered thereupon by execution.

SEC. 7. The mayor shall have the right to collect fees for ser-
119 vices rendered, according to the fees established for justices of

the peace, and such other fees as are by law given to him as such mayor ex-officio, but shall have no other salary. The marshall shall have and receive the fees of a constable, but no other compensation, for his service. The treasurer shall be entitled to receive and may retain such amount as the council may in its discretion allow, not exceeding five per cent. on all moneys that may come into his hands by virtue of his office. The assessor and collector shall be entitled to receive and may retain in his hands such amounts as the council may in its discretion allow, not exceeding five per cent. on all moneys that may come to his hands. The secretary shall be entitled to charge same fees as those allowed by law to county clerks for similar services, and the council shall be allowed to expend any sum not exceeding two hundred dollars in one year for attorney's fees.

SEC. 8. That all property, together with all rights in action and claims to property of any and all kinds which were held, owned, occupied and enjoyed by the citizens of said city under the act entitled "An act to incorporate the city of Brownsville," and which act was approved January the 24th, 1850, are hereby vested in the citizens of Brownsville, and all liabilities incurred by said citizens under said act of incorporation shall stand and be against the property vested in said citizens by this act.

SEC. 9. The first election shall be held for the officers under this act, under the direction of the chief justice of said county of Cameron, after having given ten days' notice thereof. The returns shall be made to the chief justice on the second day after the election; he shall thereupon open the returns and give certificates of election to those entitled to the same. The election for all officers shall be held annually thereafter under the direction of the mayor, at least twenty days before the expiration of the term of office, and in case of vacancy by death, resignation, or otherwise, the vacancy or vacancies shall be filled by new elections to be directed by the mayor, and in case the office of mayor shall be vacant, then the aldermen shall elect one of their own body to act as mayor until the next annual election. After the division of said city into wards the election of officers under this act shall be held in the several wards. The city council shall appoint the presiding officers. The election shall be conducted in conformity with the law regulating elections; the returns shall be made to the city council within three days after such elections; the city council shall thereupon open the said returns, examine the same, and give certificates of elections to those found duly elected.

SEC. 10. That no person shall be eligible to any office in this corporation, or entitled to vote for city officers, unless he be a citizen of this State, and shall have resided in the corporation limits of the city for at least six months next preceding the election.

SEC. 11. That all laws and parts of laws conflicting with this act are so far repealed as not to interfere with this act,

SEC. 12. That this act shall be in force from and after its passage.

Approved February 7, 1853.

THE STATE OF TEXAS,
Department of State:

I, James P. Newcomb, secretary of state for the State of Texas, certify that the foregoing six printed pages contain a true copy of an act entitled "An act to incorporate the city of Brownsville," taken from the original in the department of state, with which it has been carefully compared.

In testimony whereof I have hereunto signed my name and have caused the seal of the State of Texas to be affixed, at the city of Austin, this 21st day of May, A. D. 1873.

[SEAL.] JAMES P. NEWCOMB,
Secretary of State.

Statement of facts continued.—Political constitution of the State of Tamaulipas of 1825.—*Filed May 31st*, 1876. (*P.* 7.)

Political constitution of the free State of Tamaulipas, enacted by its constituent congress of the 6th of May, 1825; second edition ordered by the honorable congress, city of Victoria; government press,
122 directed by Juan Antonio Aguiree, 1831.

Enrique Camillo Suarez, vice-governor of the free State of Tamaulipas, to all its inhabitants:

Know ye, That the constituent congress of the same State has decreed and enacted for the internal government of this State as follows:

POLITICAL CONSTITUTION OF THE FREE STATE OF TAMAULIPAS.

The constituent congress of the federated State of Tamaulipas, lawfully convened in the name of the free people of the same State, which it represents, in the exercise of the powers which this people has confided to it, and in the execution of the object of its creation, invoking for success the Supreme Author and Legislator, establishes, enacts, and decrees to following political constitution for the internal government of this State:

GENERAL PROVISIONS.

ART. 1. The State of Tamaulipas is the reunion of all its inhabitants.

ART. 2. It is sovereign, free, and independent of all the other Mexican States, and of every other nation.

ART. 3. The State retains its liberty and rights as to what appertains to its internal administration and government, and delegates them to the general congress of the Mexican federation in matters relating to the same federation.

ART. 4. The sovereignty of the State naturally remains in the
123 individuals who compose it; but they will only exercise these acts of it designated in the constitution, and in the form which it provides.

ART. 5. The territory of the State comprises what *that* formerly called the province of New Santander contained. The boundaries of the State shall be fixed as soon as may be by a constitutional law.

ART. 6. The State shall be divided into eleven divisions and three departments. A law, which may be varied as circumstances may require, shall designate the places which each department and each division may contain, and their chief towns.

ART. 9. Every man who lives in the State, even as a transient person, enjoys the imprescriptible rights of liberty, security, property, and equality.

ART. 10. The State guarantees these rights; it also guarantees the well regulated liberty of the press, and forever prohibits slavery in all its territory.

ART. 11. In consequence every inhabitant of the State has the right to ask of the legislature the corrections of the violations which he observes, and to obtain the removal of the obstacles which prevent the exercise of his rights, provided it is done peaceably and with decency; such redress cannot be deferred or refused arbitrarily.

ART. 12. All men ought also to find a remedy in a recourse to the laws of the State against every act of injury or injustice which may be
124 done to their persons or property, and in conformity with these laws justice must be perfectly administered to them, and without further delay than that which the laws prescribe.

ART. 13. Neither the congress nor any other authority shall be able to take the property, even that of the least importance, of any private individual. When it shall become necessary for an object of a common recognized utility to take the property of any person, he shall first be compensated (ecrá antes indemirizado) upon the examination of arbitrators (homes buenos) appointed by the government of the State and the interested party.

ART. 34. In conformity with the form of government adopted the supreme power of the State is divided for its exercise into legislative, executive, and judicial.

ART. 35. Neither these three powers, nor any two of them, can be united in one person or corporation; and the legislative can never be exercised by a single individual.

ART. 36. The legislative power shall be vested in a congress composed of deputies elected by the popular vote.

ART. 37. The executive power shall be vested in a citizen likewise elected by the popular vote, who shall be styled governor of the State.

ART. 38. The judicial power shall be vested in the tribunals and judges which this constitution establishes.

125 FOURTH SECTION.

Of the attributes of congress and its permanent committee.

ART. 92. The attributes of congress are:

First. To decree, interpret, explain, amend, and repeal the laws relative to the internal government of the State in all its departments.

ART. 114. The governor shall continue in the exercise of his office for four years, and cannot again be elected except at the interval of four years after having ceased to exercise his functions.

ART. 115. The powers of the governor are:

Fifth. To provide for the execution of the constitution, laws, and decrees of the confederacy, and of the constitution, laws, and decrees of the congress of the State, and to give the suitable decrees and orders for their execution.

Seventh. To provide for the prompt and full administration of justice by the tribunals and judges of the State, and for the execution of their judgments.

ART. 116. The secretary of the State (el secretario del despacho) shall sign all the orders and decrees of the governor, and without this requisite they shall not be obeyed.

ART. 117. In order to promulgate the laws and decrees of the congress the governor shall use this formula:

The governor of the State of Tamaulipas to all its inhabitants:

126 Know ye that the congress of the said State has decreed the following [here the literal text of the law or decree]. Wherefore I

order it to be printed, published, and circulated, and to have its due execution.

SECTION THIRD.

Of the council of the executive of the State.

ART. 124. There shall be in the State a council of the executive, composed of five principal members and two substitutes.

ART. 130. The powers of the council of the executive are:

First. To watch over the execution of the constitution and the laws, and to report to the congress the violations which it observes.

Second. To advise the governor in the cases in which he requests it.

ART. 144. The governor, vice-governor, and members of the council of the executive who may be elected shall enter upon their offices on the first day of October immediately succeeding the election.

SECTION FIFTH.

Of the secretary of the State of the government.

ART. 146. There shall be a secretary in the State who shall be styled Secretary of State of the government of the State (secretario del
127 despacho del gobierno del estado), and all the affairs of the supreme government of the State shall be under his charge, whatever may be their description.

SECTION SEVENTH.

Of the ayuntamiento and alcaldes.

ART. 159. For the internal government of the State there shall be ayuntamientos chosen by the popular vote, which shall be composed of the alcalde or alcaldes and regidors which the law may designate, and one syndic procurator.

TITLE SEVENTH.—SINGLE SECTION.

Of the observance of the constitution.

ART. 238. Every inhabitant of the State is bound to comply with and observe the constitution in all its parts.

ART. 239. The public officers of the State, of every description, upon entering upon their public offices shall take the oath to keep the general constitution of the Mexican Confederacy, that of the State, and to discharge faithfully their duties. If they belong to the number who are to exercise authority, they are to add the oath to cause both constitutions to be observed.

128 ART. 240. Neither the congress or any other authority can dispense with the observance of the constitution in any of its articles.

ART. 247. By the present constitution all and each one of the former laws, decrees, or orders, whether general or special, contrary to the same constitution, are repealed, though they may have been promulgated as constitutional.

Given in the city of Victoria, on the 6th day of May, in the year of our Lord one thousand eight hundred and twenty-five, the fifth of independence, the fourth of liberty, the third of the confederacy, and the second of the installation of the congress of this State.

JOSE IGNACIO GIL,
Deputy President.
JOSE MIGUEL DE LA GARZA GARCIA,
Deputy Vice-President.
JOSE RAFAEL BENAVIDES.
JUAN ECHEANDIA.
JUAN BAUTISTA DE LA GARZA.
FELIPE DE SAYES.
JOSE FELICIANO ORTIZ,
Deputy Secretary.
JUAN NEPOMUCENO DE LA BARREDA,
Deputy Secretary.

Wherefore I order it to be printed, published, and circulated, and to have its due execution.

Given in the city of Victoria, on the 7th of May, 1825, the second of the installation of this State.

EURIQUE CAMILLO SUAREZ.

By order of his excellency.

JOSE ANTONIO FERNANDEZ,
Secretary.

129 *Statement of facts continued.—Decree of the congress of Tamaulipas erecting Matamoras into a town, 28th January, 1826.—Filed May* 31, 1876. (*P.* 8.)

Circular of the governor declaring the ancient congregation of Refugio a town.

Fourth seal for the years eighteen hundred and fifty and eighteen hundred and fifty-one, one real.

OFFICE OF THE GOVERNOR OF THE
FREE STATE OF TAMAULIPAS.

[Circular.]

The governor of the State of Tamaulipas to all the inhabitants thereof:

Know ye that the congress of the said State has decreed the following:

No. 12. The constitutional congress of the free State of Tamaulipas, desirous of encouraging the increase of population, and in order to perpetuate the memory of one of the martyrs of the county, has decreed the following:

ART. 1. The title of "town" is hereby granted to the congregation of Refugio, and the same shall hereafter be known by the name of "Town of Matamoras."

ART. 2. The settlement shall remain where it is now, and the government will take the necessary steps to ascertain who are the owners of the land whereon said settlement is situated, and the same will provide for remuneration, to be made in accordance with law, in case said land should be private property. The governor will execute this measure

in accordance with this decree, causing the same to be printed,
130 published, and made generally known.

Done in the city of Victoria on the 28th day of January, 1826, and in the third year of the installation of the congress of the State.

JOSÉ MIGUEL DE LA GARZA GARCIA,
President of Congress.
JUAN NEPOMUCENO DE LA BARREDA,
Clerk of Congress.
RAFAEL QUINTERA,
Clerk of Congress.

Now, therefore, I order that this decree be printed, published, and made generally known by circulars so that it be duly carried out.

In the city of Victoria on this 30th day of January, 1826, and the third of the installation of the congress of the State.

LUCAS FERNANDEZ.

JOSÉ RAFAEL BENAVIDES,
Secretary.

Statement of facts continued.—Letter of Representative Manuel Prieto presenting copy of the charter to the ayuntamento, January 20, 1826.—Filed May 31, '76. (*P.* 9.)

Representative Manuel Prieto presents the city council of Matamoras the charter printed on silk.

In compliance with the duties with which I am charged as a representative of the late congregation of Refugio, now the town of Matamoras, imbued with the desire to give the place wherein I reside
131 the standing it deserves, I moved and obtained from the august legislature of this State the decree which I have caused to be printed on silken cloth, it being the precious charter and grant of the ejidos, which I hope may serve as a monument to posterity, and I have the pleasure of delivering the same to the illustrious corporation, and I have the gratification of knowing that I have been the means of this forward step towards fortune by your town, and I at the same time congratulate you for this happy success, hoping that you will deign to accept this small gift from me with my respects, which please to communicate to that well-deserving population, with the assurance of my most cordial esteem and consideration.

God & liberty. Victoria, January 30th, 1826. The third year of the installation of the congress of the State.

MANUEL PRIETO.

To the illustrious constitutional council of Matamoras.

Statement of facts continued.—Proceedings of the ayuntamento to treating upon the survey of the ejidos, February 26, 1826.—Filed May 31, 1876. (*P.* 10.)

Proceedings of the town council treating upon the survey of ejidos, or town tract, for Matamoras.

132 In the court-house of the town of Matamoras, and on the 26th day of the month of February, of the year 1826.

The constitutional town council of said town having met in special

session in the hall of said town council, at which time the 2nd alcalde took the chair (because of the illness of the 1st alcalde) for the purpose of treating upon the survey of the town tract or site (ejidos) for said town of Matamoras in accordance with the grant from the legislature of this State, dated last January just past, and the approval of said grant by the governor on the 6th day of February, the discussion commenced by considering the most convenient and best measure for the general benefit, having regard to avoid prejudice and injury to the owners of the land; whereupon it was resolved:

1st. That Mr. Cayetano Medrano be appointed surveyor, and Mr. Jose Maria Tovas be his assistant. That all parties interested in the upper portion (of said ejidos) shall open straight paths of one league in length, that those of the lower portion shall do likewise, and all jointly shall open paths to the south and to the north. That Mr. Cayetano shall witness all of said openings so that he may give them the proper lines. That when these operations shall have been completed,
133 the measuring cord shall be extended over the paths until the same form a perfect cross. That whenever circumstances shall permit it the lines of the square shall be laid off, the same not being done now because of the want of water for the laborers who are to open the paths for the formation of said square. That the owners of the land be cited and informed of the order of the government, notifying them at the same time that the town tract (ejidos) is about to be surveyed so that they may appoint experts who shall witness the survey on their behalf, the council hereby appointing Don Manuel de Alcala in behalf of the council, and Don Juan Longoria y Serna having been appointed in behalf of Doña Maria Guadalupe Longoria, and Doña Rita Giron having twice sent word that she agreed to whatever would be done by the judge and the surveyor; and Doña Francisca Cabazos, who was present, stated that so far as she was concerned she would not appoint any one because there was no examined surveyor. In view of all which the surveyor shall begin as soon as the aforesaid paths shall have been completed, and the parties having objected that the square ought to be formed, it was ordered by the council that the same be surveyed as soon as the perfect cross shall have been completed.

JUAN JOSE HINOJOSA.
MACEDONIA CAPISTRAN.
134 JOSE ANTONIO CHAFA.
MATIAS RAMIREZ.
JUAN NEPOMUCENO CISNEROS.

MANUEL GALAN,
City Clerk.

Statement of facts continued.—Petition of Maria Francisca Cavazos to the president of the ayuntamento of Matamoras, March 28, 1826.—*Filed May* 31, 1876. (*P.* 11.)

Petition of Doña Francisca Cavazos.

Two reals, third seal, authorized by the Mexican nation for the revenues of 1826.

GARCIA.

MR. PRESIDENT: I, Maria Francisca Cabazos, a resident of this place, with due respect and obedience appear before you and say: That having been informed by your honor of the superior order that (ejidos) a town tract be given to this town, and as I am interested as a land-

owner in the ejidos to be given, I declare that I am satisfied that the superior order be carried out, but I do ask and pray that your honor graciously set aside for me my field which gives me my support and maintenance, as well as my small farm which adjoins the fence of said field, as I have already over and again represented to your honor. For right there in my field, a portion of my lands established at my expense a long time ago, as is well known, Don Francisco Farias and Don Clemente, the first a resident of Reynosa, are taking land cultivated
135 by me in former years and are driving cows onto my said farm, which of necessity causes me injury; they don't even wait until the superior order be enforced and until I shall be recompensed for the land that is to be taken from me for (ejidos) the town tract, and I should think that until that happens I ought to be permitted to retain my land and be spared the damages accruing to me be such preceeding.

I have already complained about this matter to your honor, and your honor has not done anything to relieve me or to save me from injury; and I am now compelled to resort to this petition in legal form, inasmuch as my verbal complaint was of no avail, and I say that inasmuch as, although one of the old settlers here, I am not permitted to retain this small piece of ground, I want the value of the same to be deducted from the compensation which is to be given to me for my lands taken for the town tract (ejidos), or if there is returned to me other land elsewhere in place of that taken from me, I wish that a deduction be made of said *said* land equivalent to that which I now ask for. And I further say that if my prayer be not granted because there is no justice in it, I will replace this small piece of land with an equal quantity of any of the land that is still left to me. This is all I can say.

136 And I ask and pray, if I have justice, which I hope, that your honor will order these gentlemen off, for they insult me by letting animals go about in my field without respect or consideration for me; they have even done this while I was present, and I hope your honor will do what you deem just in this matter, and I pray that this original petition be returned to me to make such use of it as I may deem necessary, and that you will order the removal of these men or any others a good distance from me, so that we may not be injurious to each other.

I again pray that your honor may grant my petition, for it is just, and I will be thankful for your favor; and I also pray for costs and all other things necessary, &c.

God and liberty. Town of Matamoras, March 28th, 1826.

I do not know how to sign my name, but I make a cross. +

Statement of facts continued.—Petition of Maria Francisca Cavasos to the superior tribunal of justice, April 1, 1826.—Filed March 31st, 1876. (P. 12.)

Francisca Cavazos petitions the superior tribunal of justice.

Five reals, third seal, authorized by the Mexican nation for the revenues of 1826.

GARCIA.

To the superior court of justice:

I, Maria Francesca Cabazos, a resident of this place, with the
137 utmost respect and humility, now present to your honor the foregoing petition, which I have addressed to the judge of this place, and from which you will perceive how little attention has been paid to my prayer, and no reason has been assigned to me for it, for if there be

a reason or cause I ought to have been informed of it an order, but, on the contrary, no attention whatsoever has been paid to me, and I think it is because he (the judge) does not want to give judgment against the persons who are injuring me because they are his first cousins, and he has even gone so far as to deny me the permit to apply to this superior court, as may be seen from the accompanying certificate. I am not only denied justice, but I am not even informed whether I am right or not, and in the meanwhile I am being insulted by the parties who are in my field; wherefore I have hastened to represent this matter to your honor, so that if I am right and am asking what is just, you may be pleased to order that I get it, but if I am wrong that I may be told of it.

I therefore ask and pray your honor to grant my petition, which is just, and I declare that it is not done with any malicious intent, and I pray for costs and all things necessary, etc.

In the town of Matamoras, this 11th day of April, 1826.

I do not know how to sign my name, but I make a cross. +

138 *Statement of facts continued.—Certificate of Lieut. Juan José Garcia Cavasos, April* 10, 1826.—*Filed May* 31, 1876. (*P.* 13.)

Testimonial certificate of Lieut. José Garcia Cavasos, 2nd company of militia.

Two reals, third seal, authorized by the State of Tamaulipas for the year 1826.

RODRIGUEZ.

The citizen, Juan Jose Garcia Cabazos, lieut. of the 2nd company of militia, now on active duty, declare that I know that I, having gone on private business to the court-house, and while there Doña Francisca Cabazos came in with a paper and asked that a pass be written thereon to enable her to present herself before the government, to which the alcalde answered her that he would not give her the pass because there had been no proceedings in conciliation, to which the lady replied that it was not her fault; that, when she had complained verbally to the two alcaldes, they had adjudged the Fariases to remain where they were.

This is what occurred in my presence, and the alcaldes did not reply to her. Then the aforesaid lady called upon me to be her witness as to what had transpired there, and, as I could not refuse, I give her this statement to use as she may deem best.

In the town of Matamoras on this 10th day of April, 1826.

JUAN JOSÉ GARCIA CABAZOS.

Statement of facts continued.

Order of the governor on the preceding petition of Fce. Cabazos.

139 *Order of the governor on petition of Maria Francisca Cavazos, April* 18, 1826.—*Filed May* 31, 1876. (*P.* 14.)

In the city of Victoria on the 18th day of April, 1826.

The alcalde of the town of Matamoras will inform this office touching the deduction this party pays for of the value of the land she now possesses from that which is to be paid her, and also of the equivalent of land which can be given her elsewhere, and also regarding the substitution of land she offers, in order that, in view of the public utility each

of her propositions may subserve, this government may determine what is most proper to be done in the premises. You will also report any reasons there may exist why she should not retain her present possession as one of so many residents. In the meanwhile (until this matter be determined here) you *you* will take care that none injure her in her property now in her possession, and to do her justice and treat her with that respect and equity to which every citizen is entitled.

FERNANDEZ.

JOSÉ RAFAEL BENAVIDES,
Secretary.

Statement of facts continued.—Report of the alcalde of Matamoras to the governor regarding Maria Francisca Cavasos.

Report from the alcalde of Matamoras asked for by the governor.

One quartilla, fourth seal, authorized by the State of Tamaulipas for the year 1826.

RODRIGUEZ.

140 *Complaints, May 8th,* 1826.—*Filed May* 31, '76. (*P.* 15.)

Court-house of the town of Matamoras, the 8th of April, 1826.

In compliance with the order of the governor of this State, wherein I was asked that justice be done to Doña Francisca Cabazos, I, the first alcalde of said to vn, directed that one alderman, acting in my behalf, and a citizen of integrity acting in behalf of the parties who had been the tenants of Doña Francisca Cabazos, and another citizen on her own behalf, repair to the field which she claims as her property and to ascertain how much there can be planted on the lands which she has under fence; that they shall ascertain whether the field is well fenced; whether any damage is being done to her, and by whom such damage is being done. They shall furthermore find out how much of the cleared land of Doña Francisca has been taken from her.

And the said alderman and two citizens having returned, they unanimously stated: That they made an ocular examination of the whole land, as directed to do, and that they found that on the land under fence belonging to Doña Francisca Cabazos at least 14 pecks (almunds) of corn can be planted; that her fence is in a very bad condition, and that the most of said fence was made up of the brush and underwood which was there and still remains growing in portions of the field and made to serve as a fence; hence, there are many openings through the
141 brush, giving rise to the injuries she receives by reason of the animals belonging to everybody who go this way to the water, the fence being in a bad condition the animals get into the field, which she has not yet planted; that the two tenants have under cultivation between both of them a small strip of land which may hold (3) three pecks of grain planted, and they have a new fence around it, and that the strip seems to have been recently cleared, as may be seen from the sprouts about it. In view of the report made to me by the witnesses delegated by me, I have charged Don Francisca and Clemente Farias (tenants placed there by Doña Francisca herself) not to injure in any manner nor to do any damage to the owner of the land; that, as soon as they shall have gathered their crops, they shall leave her land, paying her for the months they have used it; and I have also notified them that when the government shall have compensated the parties for their

lands, then each one may take what he can conveniently plant. In view of the foregoing, I have the honor to report to your excellency that it is my opinion she should not be permitted to hold her present possession in the town tract (ejidos), because, upon being remunerated by the government, she is only entitled like the balance, namely, to land enough to plant 3 or 4 pecks of corn. To leave her what she wants is to prejudice many other hard-working arms useful to agriculture, and,
142 besides, she being a lone woman, without family, four pecks of planting is enough for her.

It is well known that these inhabitants can only make crops on the bank of the river, and if the benevolence of the august assembly and the kind disposition of the superior government has graciously granted them the benefit of ejidos, they are anxious to take advantage of it, as they had been a long time wanting it.

And, again, this lady Doña Francisca, as is well known to all, has lived for many years on the labor of the poor, by hiring to some six or more residents each a sufficient quantity of land to plant a half peck of corn, for which she exacted from each the labor of planting, harvesting, and storing in her house the crops of three pecks of corn.

Therefore, and because of the reasons set forth above, she should only be allowed to hold as much land within the (ejidos) town tract as any other of the citizens.

Yes, your excellency; Doña Francisca Cabazos, according to statements made in this court, has herself placed the tenants aforesaid on her land, but when she saw the land cleared in the field which she calls her own then she wanted to run them off by pretending that they had forcibly taken possession of her property. I must also add that the said Doña Francisca, after many unbecoming acts in the court room,
143 stated that she would not abide by my decision, and, threatening to appeal, she abruptly left the court house without listening to reason or heeding when called to return, at the same time using intemperate language. And this, sir, would seem to confirm what is said of the said Cabazos, namely, that she is subject to delirium, and that when she is in that state she recollects nothing of her agreements, and afterwards she takes up the time of the courts with complaints of her own originating.

I have administered justice to the said Cabazos in accordance with your request, and make this report of the same, awaiting your excellency's resolution for my further guidance.

To the truth of all of which I sign with my assisting witnesses.

JOSE MARIA VILLARIEL.

Witness: MANUEL GALAN.
Witness: JUAN JOSE GALVES.

Statement of facts continued.—Petition of Francisca Cavazos to the governor, May 2d, 1826.—Filed May 31st, 1876. (*P.* 16.)

Another petition of Francisca Cabazos.

Five reals, third seal, authorized by the State of Tamaulipas for the year 1826.

RODRIGUEZ.

To the governor of the State:

I, Maria Francisca Cavazos, a resident of Matamoras, and a widow,

with the utmost respect and in the manner most adequate in law
144 and with all the right I am entitled, do hereby appear for the second time, and say:

That the decree of last 18th of April which your honor was pleased to issue in my behalf, wherein your honor ordered that the Messrs. Farias be restrained from taking from me the ownership my labor (field) which I established at my own expense and founded many years ago within my own lands, the same out of which a town tract (ejidos) is given, and will have to be made good to me out of other land. But, sir, may I not, as a resident, enjoy within the (éjidos) town tract the field which I have established together with my little farm, the said field holding a faneja and seven pecks of corn, and may I not have my little farm which has cost me my money, inasmuch as I have no other property excepting that field, which, with hard work, gives me my support, and is it possible, sir, that the said alcalde, by his own authority, will take and throw me out of my property for the purpose of benefiting his first cousins, Messrs. Francisco and Clemente Farias?

But I am prepared to show your excellency, notwithstanding the report of the alcalde, that it is only done for the purpose of overriding my statements and prefer his cousins'. As I said before, the order your
145 honor was pleased to give in my favor I presented duly to the alcalde, and the result was, he appointed the referees of his own choosing, who should cross the river and examine the field, one of them an alderman of the council, and when they returned, and all of us being present before the alcalde, he asked me what I wanted or required. I told him I wanted the Fariases to leave my place. He replied that they had corn planted there, to which I said if they had it was by trespassing on my land. Then the alcalde asked the referees the value of the corn planted, and they said it was about three pecks, but it is more, because the land under seed is quite large. Then the alcalde said to the referees, "If you don't decide I will," and under the pretext that these men were on my land by my consent, he asked Don Francisco what understanding he had with me, and Don Francisco answered that he was to plant 3 pecks of corn for me for the use of the balance of the field for himself. I then asked him for his proofs, and I told him that the proposition had been made to me, but that it amounted to nothing.

Then the alcalde said, "Let us now take down the referees' decision," and I seeing that the referees would not do me justice told the alcalde that I would not abide by their decision, and that I would appeal.
146 And so, Sir Governor, I hereby declare once, twice, and three times, and so many more as the law allows me, that I hold for nought all the proceedings had in this matter, because of what I have stated in this and in my former petition, that the Fariases are the alcalde's first cousins, and they have cut up my (labor) field and fenced it in as though it were their own, and when I first complained to the alcalde verbally and asked him to stop them from working on my property he ordered them both to cut into my field and both planted therein, and Don Clemente Farias even made use of some timber which I had in my labor; the same thing they did in my other lands which are in the town tract (ejidos), and they have planted corn there, and the alcalde never prevented them, and has neither forbidden them to injure me or made them leave there or the tenants they have located there without my consent. So it can't be said they are there by permission. Moreover, the alcalde has not allowed any such injuries to be done to any of the other land-owners, but only to me, and it is a well-known and notorious

fact that I alone of all are subjected to these damages, although I have had my field fenced for many years.

I further say that the land which I have within my fence may be deducted from that which is to be paid to me, or I will replace it from the land remaining to me elsewhere, so that I may not suffer damages in my labor and farm.

147 Although I have asked the alcalde for your decree and the files of the case, he told me they were on the way to the seat of government.

I now present to your honor the certificate of Lieutenant Juan Jose Garcia Cabazos, submitting it to your honor's consideration, if any it deserves.

Wherefore, and because it is just, I ask your honor to grant my prayer and for judgment specially for costs, &c.

I swear in form and as required, &c.

Matamoras, 2d May, 1826.

MARIA FRANCISCA CABAZOS.

Statement of facts continued.—Decree of the governor assigning Maria Francisca Cavazos the use of her labors, May 11, 1826.—*Filed May 31st*, 1876, (*P.* 17.)

Decree made by the governor upon the foregoing petition of F'ca Cavazos.

CITY OF VICTORIA, *May the 11th*, 1826.

In view of the report from the alcalde of Matamoras and the additional statements of Doña Francisca Cabazos, which are hereto attached in three leaves, and in order to harmonize the rights of said Cavazos with public utility, the corporation of Matamoras will at once direct that the said Cavazos remain in the possession of the labor which she claims to the extent of so much as she can cultivate, with the understanding that when the (ejidos) or land tract for said town shall be assigned the said Cabazos shall be allotted the use of so much land as she may be entitled to as any of the other residents, always, however,

148 having regard for the public service she renders, and the benefit resulting through her to others.

FERNANDEZ.

In the absence of the secretary.

JOSE APOLINAR GARCIA,
Chief Officer.

Statement of facts continued.—Proceedings of Matamoras against Maria Francisca Cavazos, June 21, 1826.—*Filed May 31st*, 1876. (*P.* 18.)

Steps taken by the town council against Doña Francisca Cabazos.

TOWN HALL OF MATAMORAS,
June 21st, 1826.

In order to carry out the foregoing superior decree, I have presented the same to the illustrious council, as the presiding officer thereof, at a special session, at which time it was agreed that Doña Francisca Cavazos be notified of the said decree, and that she must abide by the same. And in fact I caused the said Cavazos to appear before me, and I ordered the secretary to read the decree to her, which being done, this lady, sus-

picious of everything, asked that Don Felipe Roque de la Portilla read the decree for her, and when she became aware of its contents, she commenced talking like a crazy person, and she could not be restrained, but left the court-room, and I, the present judge, well knowing the disrespect which characterized the behavior of Doña Francisca Cavazos, determined to order that Don Francisco Farias continue building fences and planting the land he had worked on and cleared in said liti-
149 gated (labor) field, without interfering with the planting and labor of Doña Francisca Cavazos. All of which was done in conformity with the orders from the state department set forth in said decree, and in obedience to the mandate of the governor, to the effect no one shall be hindered from opening labors and building on the lands comprised within the (ejidos) town tract, by paying to the owners of the land the corresponding rent.

Thus have I, the citizen Jose M'a Villereal, 1st alcalde, ordered and caused to be recorded, signing said record with my assisting witnesses, owing to the absence of any notary, there being none according to law, to which I certify.

JOSE MARIA VILLEREAL.

Witness: MANUEL GALAN.
Witness: MATIAS RAMIREZ.

Statement of facts continued.—Original survey of the ejidos of Matamoras, August, 1826.—*Filed May* 31, 1876. (*P.* 19.)

In the city of Matamoras, on the tenth day of the month of July, 1826, I, the citizen Jose Maria Villareal, first constitutional of this city aforesaid, in order to comply with the commands of his excellency the governor of this State, in his order of the 6th of February last, which is the preceding one, and commences this proceeding, I ordered a summons to be given to Dona Maria Rita Giron, Don Jose Domingo de la Garza, for himself, his mother, Dona Guadalupe, and his absent
150 brothers, Don Man'l de la Garza, Dn. Laureano Garcia, y Dn. Rafael Gonzales, owners of the land that will compose the ejidos on this side of the river, and, on the other side, D'a Maria Franc'a Cavazos, who, being present, informed them all and every one of them of the determination of his excellency the governor of this State, and that in order to proceed to its execution they should name a person of their confidence to act as arbiter, who, in company with the one appointed by this tribunal, will go out and look at the land that will comprise one league on every side, which being informed of, Messrs. Garza D'n Lureano Garcia and D'n Rafael Gonzales said that they were ready to obey the decision of the government of this State, and would give up the land of their property which may comprise part of the ejidos of this city, with the distinct condition that they are to be remunerated by the government with national lands of those within this jurisdiction; and they agreed to name D'n Yrneo Gomez as their arbiter, and Dona Rita Giron and D'na Francisca Cavazos answered the first, the purport of the document signed by herself, and which is adjoined, and Doña Francisca Cavazos gave a verbal answer to the same effect; therefore I, said judge, seeing the obstinate resistance of those ladies, I determined to inform the supreme government of this State with their answers, stopping the
151 operations, to continue them as soon as I receive an answer. To give it validity, the interested parties sign it with me in the presence of two witnesses, with whom I act as notary public, there being none according to law, I testify.

In the said city, on the 7th day of the month of August, of the same year, I, the said judge, having received an answer from the government of this State, set forth in previous decrees, ought to have ordered and do hereby order the measurement of one league of land on every side from the centre of this plaza, which will serve for ejidos of the city; therefore it is ordered that the surveyors on the part of the community and for the owners of the lands that are to be occupied be named. Those whose lands adjoin are to be summoned to attend said measurement. I, the first alcalde, do thus provide, order, and sign, with two witnesses, acting as notary public, there being none according to law, I testify. In consequence of the preceding decree, I, the said judge, named as surveyor the citizen Caytano Medrano on the part of the citizens, he being a person of integrity and of some intelligence on the subject, the owners of the land naming on their part to accompany him the citizen Felipe Roque de la Portilla, a resident of this place, without the knowledge of
152 Doña Rita Giron and Doña Francisca Cavazos, on account of the (rebeldia) contumacy they manifested towards the adjudication of lands for the ejidos of this city; and those appointed being informed of their election, they accepted and promised to act according to their best knowledge, taking the usual oath before me, said judge, and to give it validity I put this by decree, which the appointed signed in presence of witnesses, which I testify in default of notary public.

In the said city, on the 12th day of the same month and year, I, the said alcalde, judge of this survey, in company with my aids, the appointed surveyors, arbiters, two computers, and other citizens whom I convoked to that effect, I commenced from the centre of the square, measuring 100 cords (cordeles) of 50 Mexican varas each in a western direction to a place known as the old boundary which divides the lands of D'ña Rita Giron from those of the late Capt. D'n Jose Antonio de la Garza Falcon, from which place 50 cords were measured towards the north, which brought us to the principal road that leads to Reynosa at the place called Estero de San Pablo, where the boundary was fixed, as it is one of the most travelled places, and following the same direction towards the north 38 more cords were measured, arriving at the river where D'n Patricio Hernandez' rancho is situated, which was
153 done with the object of finding out the quantity of land on this side that belonged to D'n Rita Giron, and which the bystanders declared to be hers, the said Doña Rita not appearing neither in person nor by agent to witness the measurement, on account of the (rebeldia) contumacy stated, and which the said judge have set down by this decree, which I sign with the surveyor and witnesses. I testify.

In the said city, on the day of said month and year, the measurement was commenced from the centre of the square towards the east, to measure 100 cords of 50 Mexican varas each; with four of them we arrived to the place which divides the land belonging to D'na Rita Giron from those of the citizens Garzas of this city, and with the total of 50 to the place known as the labor of Don Domingo de la Garza; it being very near the river, no mark could be put down on account of the land being subject to changes brought about by freshets; from this place 26 cords were measured to the south until arriving at the road which leads from this city to the sea, where a stake was driven until a firm and lasting boundary could be fixed to make it evident. I, the said judge, surveyors, and witnesses, I certify to the whole in the said city, on
154 the 16th day of the same month and year. I, the said judge, with the said surveyors and witnesses, proceeded to measure one league foland toward the south for ejidos of the said city; it was commenced

from the centre of the square, arriving with 100 cords of 50 Mexican varas each to the place known as the Cabecero de la Leguna del Tero Muerto; from where to fix a sensible mark four cordeles (cords) were measured towards the west, which brought us to the road that leads from this city to that of San Fernando, where it was provisionally fixed, the bystanders declaring that these lands belonged to Doña Rita Giron, and I set it down by means of this decree, which I signed with the surveyors and witnesses as already stated. I testify.

In the same city, on the 22nd day of the same month and year, I, the said judge, with the aforenamed surveyors, proceeded to measure one league of land corresponding with the ejidos of this city in a northern direction, and commencing from the centre of this square and without including in the width of the river, we arrived with 100 cords of 50 Mexican varas each to where a plain of San Cristobel ends, distant from
the road that leads to the Espiritu Santo Bay 43 varas to the
155 east, which place was marked in the road by a mesquite worked
into a cross, which will serve as a boundary till a firm and lasting one can be put as aforesaid, the bystanders declaring that it belonged to Doña Francisca Cavazos, and to give it validity I sign it with the surveyors and witnesses, of which I testify.

On the same day, month, and year, having concluded the measurement of on' league of land in the direction of each of the four principal points of the compass, commencing in the centre of the square which is to be adjudicated for ejidos of this city, remunerating their owners for it according to the provision made by the sovereign government of this State, I, the said alcalde, ordered that arbiters be named by the interested parties for them to make a reconno'sance of the land measured and marked, and being well informed of the quantity to be taken from each possessor, as its quality will show, the election fell on the citizen Yrineo Gomez, Meguel Longoria, and Macedonia Capistran, who, being informed of what they had to do, accepted, promising under oath to do it faithfully and legally, signing it with me, the said judge, and witnesses acting as aforesaid, of which I testify.

In the said city, on the 29th day of the same month and year,
156 before me, the said judge and witnesses, appeared the citizen
Yrineo Gomez, Miguel Longoria, and Macedonia Capristran, arbiters appointed to reconnoitre the land surveyed, and which are to serve as ejidos for this city, and unanimously and in conformity declared that in compliance with their commission they effected said reconnois'ance, and that the quality of the land comprised within the stakes is barren, excepting the bank of the river, whose margin is cultivated in some part and corn (being the crops aspired), they are very contingent on account of the scarcity of rain and heavy rises of the river. That the western and southern boundaries are staked out on Doña Rita Giron's land, that on the east on the land of D'ña , and the north one on Doña Fancisca Cavazos; and that to their understanding of the four sitios which are to serve for the ejidos of this city one and a half corresponds to the first named, one to the second on this side of the river, and on the other side one and a half to the third.

This they declared and signed with me and witnesses in the customary way. I testify.

Statement of facts continued.—Matamoras to the governor, transmitting proceedings of survey, December 11th, 1826.—Filed May 31, '76. (P. 20.)

Advice to the governor transmitting the record book of the survey of ejidos.

157 I have the honor to remit herewith to your excellency the proceedings in 8 leaves on the survey of (ejidos) town tract for this town, so that your excellency may order what is most convenient to be done in the matter of compensating the parties for the lands taken from them.

God and the law.

Court-house of Matamóras, December 11th, 1826, and the third of the installation of the congress of the State.

JOSE MARIA VILLAREAL.

To the excellency the Governor, Citizen LUCAS FERNANDEZ.

A true and exact copy taken from the original minute-book of the proceedings of the town council for the year 1826, recorded on page 92 and next page, marked No. 2, which said book is to be found among the records of this office, to which I certify.

Office of the city council of (H), Matamoras, the 19th day of February, 1875.

FELIPE SALAZAR.
City Secretary.

Statement of facts continued.—The governor's acknowledgment of the receipt of proceedings of survey, January 11th, 1827.—Filed May 31, '76. (P. 21.)

Governor's acknowledgment of the receipt proceedings of the survey.

EXECUTIVE OFFICE OF THE STATE OF TAMAULIPAS.

158 The proceedings of the survey of the town tract (ejidos) of your town, which you accompanied with yours of 11th of December last, has been transmitted to the secretary of the council of state, and as soon as a consultation will be had I will report on the matter.

I advise your honor of this in answer to your aforesaid letter.

God & liberty.

City of Victoria, January 11th, 1827, fourth year of the installation of the congress of this state.

LUCAS FERNANDEZ.

To the 1st alcalde of the town of Matamoras.

Statement of facts continued.—Communication of Matamoras to the governor in relation to the ejidos, March 8th, 1827.—Filed May 31, '76. (P. 22.)

Communication to the governor in relation to the same subject as the one preceding.

At a regular session of the town council, held on Tuesday, the 27th of February, this council was informed of your excellency's note of the 31st of January, to which you were pleased to accompany the proceedings had in the matter of the assignment of land for a town tract for this

town, as well as the superior order emanating from your excellency in pursuance of the decision of the council of state under date of the 10th of the same month, and in order to carry the same out and to clear
159 off all further doubt upon the subject, this town council resolved at the session aforesaid to appoint, and they did appoint, a committee composed of one of its own members and the syndic procurador, to proceed and see your excellency, and to represent to you the right and justice that this town has for obtaining the ejidos (town tract) which it has been for some time claiming. The town council herewith enclosed the main proceedings, and not transmitting those instituted by Doña Rita Giron, which the council of state asks for, because the same is now in the state department, where it was sent to under date of the 7th of June, 1823, by an order of the most excellent ex-deputation, dated May 17th of the same year, as may be seen from the documents Nos. 1 & 2, certified copies of which herewith accompanying. The receipt of said proceedings issued by the 2nd vocal of the ex-deputation by Citizen Leno Perea, owing to the absence at that time of the gifi politico, is evident from the official communication, dated the 26th of July, 1824, wherein it is acknowledged that the town council had forwarded them to the government, in which department they should be found among *among* the records in their appropriate package. All this will assist your excellency in comprehending the steps that had been taken, and of the petitions that had been presented by the inhabitants and their judges in order to obtain the grant of the town tract (ejidos),
160 which is of so much interest to the people here, and even the state at large. A certified copy is likewise enclosed of the appointment by the corporation of the two individuals mentioned, in order that your excellency, having all the information upon the subject and taking under consideration the complaints of the inhabitants, may form a favorable opinion, and will assist in bringing about a favorable result. This council is satisfied from your excellency's well-known integrity, that you will not permit any more delay in a matter where the general good is concerned, and where the law of the 30th January, 1826, is so clearly expressed and promulgated by you with reference to the endowment of ejidos to the former congregation of Refugio, now the town of Matamoras, and which (ejidos) are so necessary to the people thereof, and which wise provision of that honorable assembly appears in the enclosed proceedings.

God & liberty. Court-house, &c., March 8th, &c.

ANDRES DE SOLDAÑA.

MANUEL GALAN, *Secretary.*

Statement of facts continued.—Communication of Matamoras to the governor advising of the removal of syndic.

Communication of the corporation of Matamoras to the governor advising him of the withdrawal of the appointment of procurador from Antonio Maria Casas.

161 *Antonio Maria Casas, April* 21, 1827.—*Filed May* 31, '76. (*P.* 23.)

This corporation could not otherwise than resolve, taking in consideration the accompanying copy marked No. 1, remitted herewith to your excellency for your special information, that the syndico procurador, Mr. Antonio Maria Casas, appointed by them to urge before you the approval

to the grant of the ejidos for the good people inhabiting this town, be relieved of said commission for the good and sufficient reasons that in said document are set forth, and of which your excellency will no doubt inform yourself.

It was that same reason which caused the corporation in the document ma'ked No. 2(which document is herewith transmitted) to order the removal of the citizen procurado from the commission which had been intrusted to him. This day the notice was given to the citizen procurador in a document marked No. 3, and of which a copy is herewith remitted to your excellency, wherein we request him the said commission to return to this obedient town council, which has the honor to be under your orders, and the town council repeats said request that the said commissioner at once deliver up to your excellency the documents which the corporation remitted by him under date of the 8th of last March, and which were his credentials before the superior authority which is legitimately entitled to take cognizance of the matter.

162 The just resentment which this entire corporation has felt in a body on this occasion cannot be concealed from your excellency, for, when it was expected that the fruits of our labors were about to be realized, we find that selfish interests work against the public welfare of this town, and, taking advantage of this feeling, parties are working against our interests and embar'ass more and more the execution of this matter, according to positive information which this corporation possesses, but for the present will not divulge. But your uprightness, excellency, as father of all the towns comprising this free State, and over which you rule with so much dignity, you, we say, will no doubt use the *the* power with which you are invested to obtain the ejidos for which this town prays, if supported by the executive power and your excellency's kindness of heart, which is notoriously known, and which are reasons (besides your profound learning) why you grace the position you occupy, this corporation will forever be grateful to you, and will hand down your excellency's name to posterity, that they may bless the benevolent hand which after so many difficulties overcame them for their happiness.

God and law.

163 Council chamber of the town council of Matamoras, April 21st, 1827, fourth year of the installation, &c.

ANDRES SOLDANA.

MANUEL GALAN, *Secretary.*

To his excellency the governor of this State, Don Lucas Fernandez.

Statement of facts continued.—Final decree of the congress of Tamaulipas respecting the expropriation of the ejidos and general law of expropriation, October 15, 1827.—*Filed May* 31, '76. (*P.* 24.)

SECRETARY'S OFFICE OF THE CONGRESS OF THE STATE OF TAMAULIPAS.

EXCELLENT SIR: In to-day's session the honorable has decreed the following: The government, in the use of its faculties, will see that the civil authorities of Matamoras will compel Da. Rita Giron and Da. Francisca Cabazos to obey the *constition* and the laws. If these ladies are notified the 2d and 3d time without their naming the corresponding arbiter for the indemnization of the lands which are to be taken for ejidos, the ayuntamiento will proceed to have them measured and used without further summoning. When the time arrives in which the parties or their heirs will ask for the indemnization of their lands, and are will-

ing to name the arbiter spoken of in the 13th article of the constitution of the State, a new measurement will be effected if they desire it, and the land they asked for before will be given them as a recompense. This resolution must be communicated to the government that, in con-
164 formity with it in the present case, it may serve as a general rule in any other case that may occur, until a decree may fix the bases that are to be observed, which I communicate to your excellency by order of the honorable Congress, for your knowledge and action thereon, returning the documents at the same time.

God and liberty.

City of Victoria, October 15th, 1827.

DIEGO DE INOJOSA,
Deputy Secretary.

To his excellency the governor of the State.

On the margin: Inserted to the ayuntamiento of Matamoras, and circulated throughout the whole State on the same date.

It is a copy of the original, which is in the archives of this office, is faithfully corrected, and is taken at the request of Mr. E. Basse, in compliance with the government decree, which is to be found in the margin of the petition. It is written on two sheets and stamped with the seal of this office, the last signed, and the other marked with a flourish by the subscriber, 1st officer, acting as secretary.

JORGE HOPHAM,
1st Officer.

Statement of facts continued.—Proceedings of the ayuntamiento of Matamoras ordering citation of owners of the land taken for ejidos to apply to Victoria for indemnity, December 3, 1831.—Filed May 31st, 1876. (P. 25.)

There is no sealed paper of the corresponding stamp in the office of the administration.

In the town of Matamoras, on the third day of December, 1831, constitutional ayuntamiento of the said town having convened in an ordinary session, presided over by their president, to make the reso-
165 lutions which appertain to it, the president declared the session opened, and ordered the secretary to read the petitions that had been made; upon which a petition of the citizen Juan Tigerina was read, as to compensation for the lands which they took from him for ejidos, or that he should be indemnified for what had been taken; and as the governor orders the parties to apply, by themselves or by their attorney, for the settlement of the matter of the petition, the ayuntamiento ordered that this precept should be complied with in all its parts. The ayuntamiento resolved that the peaceable citizens who ask for land on the plaza for stations on Christmas holidays should have it granted to them by the syndic procurator or his agent. It was also resolved that there be assigned to the citizen Juan de Hinojosa a vacant lot which he formerly denounced, on the Plaza de Armes, and in which he should be placed in possession immediately, considering that he is in possession of it in right of his legitimate father, to whom it was assigned in the year 1827.

A petition of various citizens having been read for the establishment of butcheries of all kinds of animals in points at a distance from each other and no longer are subject to the contestors, the petition having been heard, the ayuntamiento declared that the petition was not admissable, since all were at liberty to slaughter where they pleased,
166 not leaving any kind of offal.

It was resolved that a vacant piece of land that the citizen Pascal Reyna had demanded in the square of Commerce should be assigned to him; finally, it was resolved that a notification should be made to the citizens owning the lands which were taken for ejidos, of the final resolution, that within the period of twenty-five days, or a month at most, reckoned from the date of this entry, they should present themselves to the government of this State for the indemnification or compensation of the said lands. The illustrious corporation has so ordered, its president signing it, with all the members of the ayuntamiento and its secretary, which I certify. This is a copy conforming to its original, from which it was ordered to be copied by a resolution of the illustrious ayuntamiento of the 20th of April last, at the request of Don Juan Treanor, as the representative of Don Rafael Garcia Cavazos, on two legal leaves of common paper, there being none of the corresponding seal in the office of the administration in this city.

Matamoras, May 2, 1850.

JUAN PRADO,
Secretary ad interim.

Statement of facts continued.—Proceedings of the ayuntam'ento ordering citation of owners again to appear at Victoria for the indemnity of the lands taken for ejidos, April 19th, 1834.—Filed May 31st, 1876. (*P.* 26.)

For the years 1833 and 1834, I, Francisco * * secretary of the very illustrious ayuntamiento of the city of Matamoras, certify that in the book of the corporation for the present year there is on pages
167 138 and 139, of the 19th instant, in which a determination of the following tenor is found:

"The said syndic demanded that the decree of the supreme government of the State of June 29th, 1831, be complied with; it provides that owners of the land that this city occupies be notified to go to the capital of the State, in person or by agent, to show the right that they may have to the indemnization of the same, which affair has been set afoot several times for its accomplishment, and it has observed, with great pain, that an affair of such importance should be let to slumber in silence with notable grievances to the interested parties and the citizens; for which he requested it to be complied with exactly, otherwise to indicate a means of putting it into execution and demand it of the government."

And the corporation being informed of its contents and of the justice attending the demand of the syndic, resolved that the citizen alcalde 1st, with all preference, will enforce the said decree, making the parties appear to be notified, and giving immediate information of everything to the supreme government for it to act as may be convenient, as likewise informing this body of the execution of this order, that they may give the same advices to the superiority (superioridad), with the understanding that if there are any obstacles put in his way towards enforcing this order he will inform the corporation of it, that they may
168 take proper measures; which order the president will acquit.

For the validity of which I give the present by a judicial order in Matamoras on the 25th of April, 1834. I testify.

FRANCISCO MAYORGA.
Secretary.

Statement of facts continued.—Judicial proceeding of the 1st alcalde of Matamoras ordering citation of owners of land of ejidos to appear in Victoria in thirty days.—Citation of Ma. Francisca Cavazos, and her waiver of indemnity, April 23, 1834.—Filed May 31st, 1876. (P. 27.)

CIUDAD VICTORIA, *June* 29, 1831.

The ayuntamiento in all preference will give information respecting the state of the affairs of the ejidos, and the first alcalde will order the owners of land they occupy to present themselves at this capital in person or through agent, within a determined and prudent time to be fixed, so that hearing the attorney-general of finance (fiscal de hacienda) the indemnization to all may be agreed upon, bringing with them all the proceedings had relative to the case. Guerra; Manuel Garza de Porras, secretary 1st tribunal of Matamoras, April 23, 1834. The supreme order of the government of this State being accumulated in this proceeding, it is ordered that the fiscal resolution of the 19th instant be complied with, in which the illustrious ayuntamiento has deliberated about the ejidos of this town, adding the secretary's certified copy of whatever may be conducive, and in consequence the proprietors of the lands are to be summoned to appear within the term of thirty
from this date, before the government, in person or by agents, for the just indemnization which the 13th constitutional article decrees, with
the understanding that as they have been summoned before, this
169 will be the last and peremptory term that will be given, and if
they do not appear they will suffer the damages of the law, naming, in default of appearing, agents for the election of assessing articles for removing the obstacles which his omission has presented in so important affair. And by this act the citizen Juan Longoria y Serna, 1st constitutional alcalde, so decreed, ordered, and signed it. I testify.

JUAN LONGORIA Y SERNA.

In my presence, Antonio Escoveda, public notary, Doña Francisca Cabazos, whom I personally know, being present, I immediately made known to her the preceding decree, telling her at the same time that she must appear before the supreme government of the State and present the titles of property in order that the dimensions of the ejidos lands which correspond to her may be determined, and being informed of all, said that her titles were in possession of Don Juan Figerina, he being a coparcener, and in reference to the indemnization of the ejidos land which corresponds to her, she will receive it in money as the government may dispose, leaving her her labor to which she considered herself as having a better title than the other neighbors, and stating that on account of her advanced age she cannot appear in person, nor by agent, but that she will abide by what the government may dispose, because she esteems its resolutions as paternal; this she answered, and did not sign, not knowing how. I testify.

SERNA.

ANTONIO ESCOVEDO,
Notary Public.

170 *Statement of facts continued.—Ordinance of the city of Matamoras relating to rents of labors.—Filed May* 31, '76. (*P.* 28.)

Ordinance of Matamoras relating to rents of labors.

I, the citizen Felipe Salazar, secretary of the respectable ayuntamiento of the heroic city of Matamoras, do certify that in the municipal ordi-

a bell and clock. Stairways to be made as per plan, to be well boxed in. All the dressed woodwork to have one coat of priming. The
175 whole work is to be built of materials of the best quality.

The parties of the second part agree to furnish all the materials necessary for the said work at their own expense. The said building is to be erected and the work*ed* performed in accordance with the said plan referred to, in a good, substantial, and workman-like manner, subject to the approval of a committee of inspection to be appointed by the city council of Brownsville. In consideration of which the City of Brownsville, the party of the first part, agrees to pay the said parties of the second part the sum of eighteen thousand two hundred and sixty dollars in six years from the completion of said work, with interest at the rate of eight per centum per annum from the time of the completion of said work until the whole amount is paid. It is also agreed that from the time of the opening and putting in use the lower story of said building as a market house, the amount invested shall bear interest at the rate aforesaid. The payment of the said sum and interest is to be made in manner following, to wit: The net proceeds of said market house are to be paid over to the parties of the second part monthly from the date of the opening of said market until the whole amount is paid. And it is further agreed that the said parties of the second
176 part have lien upon the said market house and the nett proceeds thereof for their better security until the whole amount of the said eighteen thousand two hundred and sixty dollars and the interest thereon shall be fully paid and satisfied. And it is further agreed that as soon as the lower story of the said market house shall be in a suitable condition, the same shall be opened as and for a market house of the city of Brownsville, and from thenceforth the same shall be the sole and only market in said city of Brownsville until the said sum of eighteen thousand two hundred and sixty dollars and interest be fully paid and satisfied. For the due performance of all which the said parties mutually bind themselves under a penalty sufficient to cover all damages that may be sustained by either party for any default thereon.

In testimony of which the City of Brownsville has hereto affixed its corporate name and affixed a scrawl for seal (no regular seal having yet been procured) by its aforesaid committee, who have hereto signed, and the said John P. McDonough and A. Suzeneau have also affixed their signatures, with scrawls for seals, this twenty-eighth day of November, A. D. 1850, at Brownsville, in the county of Cameron, State of Texas.

CITY OF BROWNSVILLE. [L. S.]

By its committee.

177 J. M. CONRAD,
WM. W. NELSON,
THOS. B. BUCHANAN,
R. S. LEMON, *Committee.*
JOHN P. McDONOUGH. [L. S.]
A. SUZENEAU. [L. S.]

THE STATE OF TEXAS,
County of Cameron:

Before me, clerk of the county court in and for the county and State aforesaid, personally appeared James M. Conrad, Wm. W. Nelson, Thos. B. Buchanan, R. S. Lemon, John P. McDonough, and Adolphe Suzeneau, each to me well known, who acknowledged that they had executed the foregoing instrument of writing as their own free act and deed for the considerations and purposes therein set forth.

To certify which witness my hand and seal of office this 20th day of Jan., A. D. 1851.

F. W. LATHAM,
Clk C. C. C. C.,
By B. H. FRY, *Deputy.*

Filed for record January 20th, A. D. 1851, at 10 o'clock a. m., and recorded same day.

F. W. LATHAM,
Clk C. C. C. C.,
By B. H. FRY, *Deputy.*

THE STATE OF TEXAS,
County of Cameron:

I, Budd H. Fry, clerk of the county court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy taken from book D of real estates, pages 396, 397, 398, 399, and 400.

In testimony whereof I have hereunto set my hand and seal of
178 office this 25th day of May, A. D. 1857.

BUDD H. FRY,
Clerk County Court Cameron County.

Statement of facts continued.—Deposition of H. B. Rickey, with exhibits.—Filed June 1, '76. (*P.* 32.)

Interrogatories propounded to H. B. Rickey.

Interrogatory 1st. What office do you hold, if any, with reference to the city of Brownsville, and how long have you held the same?

Int. 2d. Are you or not familiar with the books and papers comprising the archives of the late or former city of Brownsville, and who is the proper custodian or keeper of said archives?

Int. 3rd. Look upon the paper, exhibit marked A B, and say whether or not the same embraces correct copies of the original document and minutes from which the same were extracted, and, if you shall answer in the affirmative, state your means of knowing; declare fully, and whether such originals are or are not a portion of the archives of the former city of Brownsville.

Int. 4th. Are you not acquainted with the market building of the city of Brownsville? If yea, where is the same situated as regards locality, who is in the possession and enjoyment of said building, and how long has such party been in such enjoyment and possession?

Int. 5th. State, if you know, where the original contract with
179 McDonough and Suzeneau for the construction of said market building is; have you not searched for the same? If yea, where have you searched for the same, and with what result? Declare fully.

Int. 6th. Please to state what portion of the contract for the building of the same remains unpaid, so far as you are informed; and please state, also, your means of information in this respect. If your answer hereto involves any matters of record in the archives of the city of Brownsville, please attach full copies of the same.

Answers of H. B. Rickey.

Answer to int. 1st. I am secretary, and have held the office since 1853.

Ans. to int. 2d. The books and papers comprising the archives of the late or former city of Brownsville are under my charge, as secretary, and I am familiar with such portions as have connection with the new charter.

Ans. to int. 3d. The exhibits marked A B are correct copies of the original documents and minutes of the city of Brownsville under its former charter, now a portion of the archives of the city of Brownsville.

Ans. to int. 4th. The market square is in block eighty-seven, being the fourth block from the government quarters of Fort Brown,
180 and the third block back from the Rio Grande. It is in possession of the city of Brownsville and Messrs. McDonough & Suzeneau, contractors to build the market-house, and in the enjoyment of the revenue derived from the same. The proceeds of the market has been paid to the contractors since May, 1851.

Ans. to int. 5th. I have searched for the original contract with the builders of the city market, but do not find it among the papers on file in my office.

Ans. to int. 6th. There was due the contractors, as per account current and interest account, on the first day of January, 1857, the sum of fourteen thousand three hundred dollars and four cents, as per copies 1 & 2, attached hereto.

Document No. 1, referred to in answers of H. B. Rickey.

To build the city market, city of Brownsville, int. ac. with said city.

CR.

	Interest.	Principal.
By agreement of Messrs McDonough & Suzeneau are to receive for building the city market house the sum of		$18,260 00
" int. on $5,900 from May 16, '51, to Sept. 1st, '52, by order of city council. @ 8 p. c	525 55	
" interest on contract price from Sept. 1, '52, to Dec. 31, '56, @ 8 p. c	6,415 34	
" order drawn for repairs, Dec. 31, '53		110 00
" int. from Dec. 13, '53, to Dec. 31, '56	21 20	
" order drawn for repairs July 17th, 1854		20 38
" int. from July 17th, '54, to Dec. 31, '56	4 06	
" order for repairs July 23, 1855		85 00
" int., July 23d, 1855, to Dec. 31, '56	7 93	
181 Amount brought forward	925 20	7,497 48
DR.		
To am't by equation, Dec. 22d, 1854, 739 days, @ 8 p. c	244 69	
To amount paid by the city treasurer, June 23d to Dec. 31, '55		689 70
" interest Dec. 31, '55, to Dec. 31, '56, 366 days, @ 8 p. c	56 09	
" amount paid J. G. Browne, by contractors, Jan'y 1st to Dec. 31st, 1856		1,595 00
" int. by equation, July 1st, '56 to Dec. 31st, '56, 183 days, @ 8 p. c	64 86	
" balance interest ⅜ to principal	5,689 24	
" balance due the contractors Dec. 31st, 1856		14,382 44
	6,980 08	24,164 62
CR.		
By amount brought forward	6,980 08	18,475 38
" balance of interest ac. Dec. 31st, 1856		5,689 24
	6,980 08	24,164 62

Brownsville, Jan'y 1st, 1857.

H. B. RICKEY,
City Sec'ty.

CITY OF BROWNSVILLE,
Cameron County, Texas:

We, the undersigned, contractors to build the city market, city of Brownsville, have examined the above and foregoing account and interest account with the city of Brownsville, and, finding the same correct, binding ourselves and heirs, administrators, and assigns, to abide by the same as a final settlement of our account with the said city to January 1st, 1857, and that this account shall be the basis of all future accounts with said city as to the building of the market-house. Signed by our hands and sealed with our seals (using scroll for seal) this
182 first day of April, 1857.

HUGH O'CONOR, [SEAL.]
Assignee of J. P. McDonough.
A. SUZENEAU. [SEAL.]

Exhibit No. 2, referred to in answer of H. B. Rickey. From the journal of the city of Brownsville, Jan'y 24, 1857.

The committee on finance made a verbal report on the account of the contractors of the city market and city of Brownsville, which was accepted, and said account ordered to be placed on the minutes of this council, it being understood that said account was to be received as a settlement with the contractors from the date of said account and to be the basis of all future accounts between this council and said contractors.

I certify the accompanying a/c and the above proceedings to be correct statement from the archives and documents in my office.

H. B. RICKEY,
Sec'ty City Brownsville.

Statement of facts continued.—Abstract from the journals of the city of Brownsville relating to market-place, November 2, 1850. *Filed June* 1, 1876. (*P.* 33.)

Abstract from the journals of the city of Brownsville.

(Journal, page 116.)

SATURDAY EVENING, *Nov.* 2, 1850.

Alderman Conrad proposed the following resolution, which was, on motion, adopted:

Resolved, That a space seventy feet on each side of the alley run-
183 ning through the centre of block eighty-seven (87), and extending between Eleventh and Twelfth streets, as laid down on George Lyon's map of the city of Brownsville, together with the said alley, be and the same are hereby taken and appropriated for the purpose of a public market-place for said city, and for such other purposes as the said city may from time to time order and appoint.

Resolved, That all persons having objections to make to the appropriation above made, and to the closing of the alley above specified, do make their objections thereto, and file their claim for damages therefor, within thirty days from the first publication of these resolutions, in accordance with law, or that they be thereafter barred from so doing.

Resolved, That these resolutions be attested by the mayor, president, and clerk of the city council of the city of Brownsville, and published

in the English and Spanish languages, in the official journal of the city, for thirty days, as a notice and information to all concerned.

(Journal, page 124.)

SATURDAY, *Nov. 30th*, 1850.

Committee on public buildings report that the contract for the building of the city market had been signed by Messrs. Seuzeneau & McDonough, the contractors, and that the work would be commenced immediately. The committee also moved that the said contract be con-
184 firmed by the council.

The ayes and nays being called on the adoption of the above report and motion, it was adopted by the following vote:

Ayes: Garey, Casswell, Nelson, Conrad, Wentz, Scarborough, and Buchanan—7; nays: none.

Statement of facts continued.—Agreement of counsel. Filed June 2nd, 1876. (*P.* 34.)

In open court, during the trial, June 2d, 1876.

It is conceded by counsel on both sides that the possession by the United States of the garrison grounds, and Fort Brown, at Brownsville, is not regarded as operating in favor or to the prejudice of either party.

JAS. R. COX,
For Def'ts.
POWERS & MAXAN,
Att'ys for Pl'ff.

Statement of facts continued.—Proceedings of county court of Cameron County, Tex., granting ferry license to the city of Brownsville, Sept. 7th, 1850. *Filed June* 1, 1876. (*P.* 35.)

Be it remembered that on the second day of September, A. D. 1850, there was begun and holden a county court in and for the county of Cameron, State of Texas, at the court-house thereof in the town of Brownsville, in special session.

Present, the Hon'bl. H. L. Grinsted, chief-justice; R. S. Lemon, F. Cummings, commiss's; P. Nichols, sheriff; B. H. Fry, dep't. cl'k.

Whereupon the following proceedings had: Commissioner Lemon moved that the matter of the ferries be considered and acted upon.
185 The motion was ruled out of order by the chief justice, and on an appeal taken from his decision the motion was adopted.

Be it remembered that on fifth day of September, A. D. one thousand eight hundred and fifty, there was begun and holden a county court in and for the county of Cameron and State of Texas, at the court-house in the city of Brownsville in special session.

Present, the Hon'bl. H. L. Grinsted, chief justice; R. S. Lemon, F. Cummings, A. S. Hedrich, commissioners; P. Nichols, sheriff; F. W. Latham, clerk.

There appearing no business, the court adjourned until to-morrow morning at 9 o'clock.

SEPT'BRE the 6th, A. D. 1850.

The court met pursuant to adjournment.

Present, the Hon'bl. H. L. Grinsted, chief just.; R. S. Lemon, A. S.

Hedrich, F. Cummings, A. Glaevecke, commissioners; P. Nichols, sheriff; F. W. Latham, cl'k.

The minutes of the last and 2nd days' session of the regular term of this court, last holden (to wit, the 2nd of the present month), not showing the state in which the ferry question, between William Alling, the city of Brownsville, & others, was left by the adjournment of said
186 court, it is ordered that the minutes of said regular term for the last day thereof be amended to read as follows: On motion the court proceeded to the application of William Alling for a ferry license across the Rio Grande River. opposite the city of Brownsville, and the opposition of the city of Brownsville thereto, and the application of said city for the same privilege.

Pending the hearing of the application of said William Alling for said ferry license, the court was adjourned.

SEPT'B'R *6th*, 3 *o'clock p. m., A. D.* 1850.

The court met pursuant to adjournment.

Present, the Hon'b. H. L. Grinsted, chief justice; R. S. Lemon, F. Cummings, A. S. Hedrich, commissioners; P. Nichols, sheriff; F. W. Latham, clerk.

Upon the motion of Mr. Lemon to take up the matter of the ferries, the chief justice stated that applications having been made to him in vacation by the city of Brownsville and by William Alling, by his agent, John Webb, for the right of ferries across the Rio Grande in the district, of which F. Maxan is at present the licensed ferryman, and he considering that William Alling was entitled to the said right of ferriage, grants the same to him until the next regular term of the county court. And that having granted said right to the said William Alling, and not believing it to be competent for the county court to de-
187 cide upon rights of said character at a special term thereof, he could not consistently set & decide the rights of said parties until the next regular term of said court; wherefore he asked the court to adjourn until the next regular term, and upon their refusal to do so, the chief justice withdrew.

Approved.

H. L. GRINSTED,
Chief Justice.

SATURDAY MORNING, *Sept'b'r 7th, A. D.* 1850.

The court met pursuant to adjournment.

Present, the chief justice refusing to set, F. Cummings, R. S. Lemon, A. S. Hedrich, commissioners.

The application of the city of Brownsville for a ferry license across the Rio Grande opposite to said city having been submitted, whereupon the following proceedings were had.

On motion it was ordered that the motion filed by the counsel of the city of Brownsville, in relation to the temporary ferry license issued by the chief justice in vacation to William Alling, the same is hereby allowed, and the said order of the chief justice, and the license issued by him to said William Alling, be and the same is hereby revoked, annulled, and set aside.

188 The court then proceeded to give its judgment and decree upon the petition of the City of Brownsville for the right of a ferry license across the river called Rio Grande, opposite the city of Brownsville, and the opposition of William Alling to said application, and the said William Alling and his alleged agent, John Webb, and his attor-

neys, Basje & Hard, being called to sustain said opposition and not appearing, and the court having considered the law and evidence produced by the corporation of the city of Brownsville, "do order, adjudge and decree that a license do issue to the City of Brownsville" for a ferry across the river called Rio Grande, opposite the city of Brownsville, at such point as the city council shall select, between the qua'termaster fence and the point opposite the termination of Eleventh street in said city of Brownsville, for the term of one year, to commence on and from the eleventh day of the month of September, A. D. 1850, upon the said City of Brownsville paying the sum of one hundred dollars, the tax required by law, and giving bond and security as required, and that the opposition and application of William Alling for the aforesaid ferry privilege license be dismissed and rejected at his costs. It is further ordered and decreed that the sheriff of the county of Cameron on the said
189 eleventh day of the month of September, A. D. 1850, turn over to the aforesaid City of Brownsville or its authorized officers or agents possession of the aforesaid ferry right and privilege. It is further ordered and decreed that the same rates of *tole* for ferriage shall be established and fixed for the said year as have heretofore been ordered and fixed by this court.

The City of Brownsville then presented to the court the bond required by law, which was approved and ordered to be filed, and the receipt of the county treasurer heretofore on file for the sum of one hundred dollars, the tax imposed by law, being produced, it is "ordered and decreed that a license do issue to said City of Brownsville" for the ferry rights allowed by this court, and the said license has issued signed by the commissioners and attested by the clerk of the court with the seal of the court.

THE STATE OF TEXAS,
County of Cameron:

I hereby certify that the foregoing is a true copy from the minutes of the county court of Cameron County, Texas, taken from book "A," pages 95, 96, 97, 98, 99 & 100 of said minutes.

Witness my hand and official seal, at my office in the city of Brownsville, this 31st day of May, A. D. 1875.

[SEAL.] ADOLPHUS GLAEVECUE,
Clk Dist. Court, Cam. Co., Tex.

190 *Statement of facts continued.—Proceedings of county court, Cameron County, Tex., granting ferry license to city of Brownsville, June* 15, 1853.—*Filed June* 1, '76. (*P.* 36.)

Be it remembered, that on the 25th day of May, A. D. 1853, there was begun and holden a county court in and for the county of Cameron, State of Texas, in special session.

Present, R. Garland, chief justice; A. Werbiskee, Angel Fernandez, county commissioners.

On Saturday, May 28th, A. D. 1853, it being a day of the term, the following proceedings amongst others were had:

This day the matter of the Brownsville ferry question coming to a hearing, contended for by Basje & Hard and Edward Dougharty, attorney for the City of Brownsville, after a mature deliberation of the evidence adduced by the contending parties, it was ordered, adjudged, and decreed by the court that the ferry privilege be granted to the said City of Brownsville for the term of one year, upon her giving bond in

the sum of two thousand dollars with good and approved sureties, and paying the tax required by law.

COUNTY COURT IN VACATION,
June 15th, A. D. 1853.

The City of Brownsville having given bond with approved sureties, and paid the tax required by law, it is therefore ordered that a license issue to the said City of Brownsville, to continue for the term of
191 one year, which was accordingly so issued.

THE STATE OF TEXAS,
County of Cameron:

I do hereby certify that the foregoing is a true and correct copy from the minutes of the county court of Cameron County, in book "A," page 181.

In testimony whereof witness my hand and official seal at office, in the city of Brownsville, this third day of June, A. D. 1875.

[SEAL] ADOLPHUS GLAEVECKE,
Clerk District Court Cameron Co., Texas.

Statement of facts continued.—Proceedings in district court Cameron County, Tex., to appraise Fort Brown, November 29, 1853.—*Filed June* 1, 1876. (*P.* 37.)

THE STATE OF TEXAS,
County of Cameron:

Be it remembered that on the seventh day of November, A. D. 1853, there was begun and holden a district court in and for the county of Cameron, at the court house thereof in the city of Brownsville.

Present, Hon. A. W. Arrington, judge; W. W. Nelson, clerk; E. M. Anderson, sheriff.

E. J. Davis, esq., district attorney elect, appeared in court and took the usual oath of office, and thereupon entered upon the discharge of his duties.

192 And on the 29th day of November, A. D. 1853, it being a day of said term, among other, the following proceedings were had, that is to say:

In the matter of the application of Stewart Van Vliet on the part of the United States for the purchase of the land within the garrison of Fort Brown.

On motion of the attorney for the United States, it is ordered that a jury be summoned to assess the value of the land mentioned and described in the application herein.

In the matter of the application of Stewart Van Vliet, &c.

Now comes Maria Josefa Cavazas by her attorney, and by leave of court, first had and obtained, files her protest against the proceeding herein.

In the matter of the application of Stewart Van Vliet on the part of the United States, &c.

Now comes Basse & Hord, and by leave of court, first had and obtained, filed their protest to all the proceedings had under the application.

In the matter of the application of Stewart Van Vliet on the part of the United States, &c.

193 Now comes the City of Brownsville by its attorney, and by leave of court, first had and obtained, files the consent of said city to the proceedings herein.

In the matter of the application of Stewart Van Vliet, on the part of the United States, for the assessment of the value of the land within the limits of the garrison of Fort Brown.

This application coming on to be heard, and it being shown to the satisfaction of the judge, that a proper notice of said application had been published in the American Flag, a newspaper published in said county of Cameron, for 8 weeks in conformity with law, came the said Stewart Van Vliet, on the behalf of the United States, and also came the City of Brownsville, a claimant to said lands, by its attorney, and consents that the said assessments be made in accordance with the prayer of said application, and also came E. Basse & R. H. Hord in their proper persons, and Marie Josefa Cavazos, by her attorney, also claimants to said land, and filed their protest in relation to said application, and a survey of said tract of land heretofore ordered having been made and the same being duly returned and the field notes and a map thereof
194 being ordered to be filed, thereupon at the request of the said Van Vliet came a jury of twelve good and lawful men who were duly empanelled and sworn, who after hearing the evidence offered on the part of the United States, and also on the part of the City of Brownsville, claimant herein, and having inspected and made an examination of the lands set out in said application as defined in the said survey, returned the following verdict:

In the matter of the application of Stewart Van Vliet, on the part of the United States, for the purchase of the land within the limits of the garrison of Fort Brown.

We, the jury, assess the value of the land mentioned in said application fifty thousand dollars.

E. D. KOTMAN, *Foreman.*

Which said verdict and assessment is approved by the judge, and it is ordered that the field-notes of said survey be entered of record.

THE STATE OF TEXAS,
County of Cameron:

I hereby certify that the foregoing is a true copy from the minutes of the district court of Cameron County, Texas, at the fall term, A. D. 1853, thereof, taken from pages 20, and 49 & 50, of book A of said minutes.

Witness my hand and official seal, at my office in the city of Brownsville, this 31st day of May, A. D. 1875.

ADOLPHUS GLAEVECKE,
Clerk Dist. Court Cameron Co., Texas,
By NOAH COX, *Deputy.*

195 *Statement of facts continued.—Proceedings of county court of Cameron County, Tex., granting ferry license to city of Brownsville, May 2, 1854.—Filed June 1, '76.* (*P.* 38.)

Be it remembered that on this 2nd day of May, A. D. 1854, there was begun and holden a county court in special session, in and for the county of Cameron, State of Texas, at the court-house, in the city of Brownsville.

Present, R. Garland, chief justice; E. Salas, A. Werbisky, county commissioners; A. W. Bell, deputy sheriff; B. H. Fry, dep'ty clerk.

The court was opened by proclamation, whereupon the following proceeding were had:

The application of the city of Brownsville for a license to run a ferry across the Rio Grande, from a landing established at a point between the quartermaster fence and the foot of Eleventh street, and the application of Basse & Hord for same right, came on this day for hearing. The city of Brownsville, by its attorney, filed a plea in bar of the claims of said Basse & Hord, for the reason that the said matters and questions had been heretofore heard and finally adjudged by this court, in favor of the city of Brownsville, which judgment had never been reversed or appealed, which said plea was held under advisement by the court till the proofs of each of said parties, in support of their claims, should have been presented. And both of said parties having presented their proofs and evidences to the title of *of* ownership of the land, within said ferry district, and on which the ferry *as* sought to be estab-

196 lished, and the same being duly considered by the court, and because it appears to the court that the city of Brownsville is the lawful owner of the land fronting on the Rio Grande, within said ferry district and on which said ferry is sought to be established, and it also appearing that the matters and questions relating to the ownership of said land and the right to the ferry therefrom has been heretofore adjudicated in this court between the said parties, and in favor of the said city of Brownsville, and the said Basse & Hord having failed to produce to the court satisfactory evidence that they were the owner of the said land within said ferry district:

It is ordered and adjudged by the court now here, that the city of Brownsville is the lawful owner of the land within the said ferry district, between the quartermaster fence and the foot of Eleventh street, fronting on the Rio Grande, and it is ordered that upon the said city of Brownsville giving bond and security in the sum of two thousand dollars, in conformity with the laws regulating ferries, and paying the tax of one hundred dollars as required by law, that a license do issue to said city of Brownsville to run a ferry across the Rio Grande from a landing on the bank of said river within said district, for the

197 term of one year from the day of the month of May, A. D. 1854.

And it is further ordered, that the said application of Basse & Hord be dismissed with costs.

The city of Brownsville having given bonds with approved securities, and paid the tax required by law, it is therefore ordered that a license issue to the said city of Brownsville, to continue until the day of June, A. D. 1855.

THE STATE OF TEXAS,
County of Cameron:

I do hereby certify that the foregoing is a true and correct copy, taken

from the minutes of the county court of Cameron County, in book A, pages 195 and 196.

In testimony whereof witness my hand and the official seal, at my office, in the city of Brownsville, this third day of June, A. D. 1875.

[SEAL.] ADOLPHUS GLAEVECKE,
Clerk District Court, Cameron County, Texas.

Statement of facts continued.—Certified copy of letter of protest of the mayor of Brownsville against payment of rents of Fort Brown, Tex., to Maria Josefa Cavazos, Feb. 26, 1869. *Filed June* 1, 1876. (*P.* 39.)

R. J:

UNITED STATES OF AMERICA:

WAR DEPARTMENT,
Washington City, January 13th, 1876.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of letter of W. Nealy, mayor of Brownsville, Texas, dated February 26th, 1869, addressed to General J. M. Scho-
198 field, Secretary of War, in regard to the Fort Brown property, the original of which is now on file in this department.

In witness whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on the day and year first above written.

[SEAL.] H. T. CROSBY,
Chief Clerk, for the Secretary of War in his absence.

Form No. 10.

BROWNSVILLE, TEXAS,
February 26, 1869.

General J. M. SCHOFIELD,
Secretary of War, Washington, D. C.:

GENERAL: The undersigned, mayor of the city of Brownsville, would respectfully state that he is informed that the local quartermaster stationed at this post of Fort Brown is instructed, by authority emanating from your department, to pay a large sum of money to Maria Josefa Cavazos, as rent for the use of the garrison post of Fort Brown for many years past by the United States, in virtue of her being the owner of the lands upon which the said post is situated.

The undersigned has always understood it to be a fundamental principle of the government to make no payments in the class of rents until the question of title, when disputed, should be fully settled
199 and established by the courts of the country, especially while such title is in actual litigation.

The undersigned presumes that the accounting officers of your department have been imposed upon by misrepresentations in regard to the title of the lands in question.

The site of the city of Brownsville, a portion of which is occupied by the post of Fort Brown, was formerly a portion of the town tract of the Mexican city of Matamoras, composed of four square leagues, and that portion of the said four leagues embraced and lying on this side of the Rio Grande, being some six thousand acres, compose the city of Brownsville.

This land, it is claimed, came to the State of Texas in the same capacity in which it was owned and possessed by the government of Mexico; and in this assertion of right, the State of Texas, in incorporating

the city of Brownsville, granted to it the lands; first by the act incorporating said city, approved January 24, 1850 (see special laws of 1850, chapter 52); second by the renewed act of incorporation of said city, approved February 7, 1853 (see special laws of 1853, chapter 17).

Shortly after the second incorporation of this city, the first act having been repealed, this Madam Cavazos brought a suit in the United States dist. court for the dist. of Texas (now eastern dist. of Texas) for this land, where (in the circuit court of the United States for said last-
200 named dist.) the same is now pending.

The undersigned furnishes a certified copy of the original petition in said cause.

No suit has ever been decided settling the disputed rights of Madam Cavazos to this land, and for this reason the City of Brownsville has never made any claim for the rents of the lands in question for occupation by the government.

Many circumstances have conduced to delay this litigation; for much of the time since the institution of this suit, no courts have been held; besides, the war intervened, and since that time neither party has moved in the case; but the city on its part is ready for trial on the call of the cause, and believes confidently in its ability to vindicate its title.

The question of the validity of the respective titles of the city and Madam Cavazos is pending in our supreme court, and has been for many years, the briefs in which case on the part of the city are enclosed, to show the nature of the respective claims.

This communication, with its enclosures, is respectfully addressed to your department as a notice and protest on the part of said city against the payment of any rents for the premises in question, until a definitive adjudication upon the title thereto.

Respectfully submitted by order of the council.

(Signed) W. NEALY, *Mayor.*

Attest:

SEAL OF CITY OF BROWNSVILLE, TEXAS. (S'g'd) R. B. FOSTER, *City Secretary.*

201 *Statement of facts continued.—Interrogatories propounded to the witnesses Leocadio Salinas, José D. Garcia, Encarnation Salas, Lino Barcenas, Felipe Gutierrez, & Leonardo Garza.*

And the plaintiff also introduced and read in evidence the testimony by depositions of Leocadio Salinas, José D. Garcia, Encarnacion Salas, Lino Barcenas, Felipe Gutierrez, and Leonardo Garza, as follows:

In U. S. circuit court, eastern dist. of Texas, at Galveston, transferred from Brownsville.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS, CHARLES STILLMAN, & William G. Hale. } No. 202.

Interrogatories propounded to the witnesses Agapito Longoria, Juan Prado, José Maria Villareal, Rafael Leal Cavazos, all of whom are residents of the city of Matamoras, in the State of Tamaulipas, and Republic of Mexico, and to the witnesses Leocadio Salinas, Higinio Salinas, Encarnacion Salas, José D. Garcia, Felipe Gutierrez, Andre Leoner, Justo Lopez, Lino Barcenas, Leonardo Garza, Francisco Her-

rera, Ramon Gutierrez, Faustino Rendon, who are residents of Cameron County, Texas, whose answers thereto when taken and returned are to be read in evidence by the plaintiff on the trial of the above-entitled cause under agreement of counsel herein.

Interrogatory 1. What is your name, age, and occupation, and how long have you lived in Matamoras or its vicinity, or Brownsville, Cameron County, Texas, or its vicinity? State fully.

2. How long have you known the corporation of Matamoras, in Tamaulipas?

202 3. Do you or not know the lands of the ejidos of Matamoras as they were originally; and, if yea, what quantity of land composed said "ejidos"? Describe the same as well as you can.

Int. 4. Did or not the ejidos of Matamoras extend across the Rio Grande into what is now Texas?

Int. 5. What locality or localities now in Texas are embraced within the said ejidos as they originally were?

Int. 6. Who, if any, exercised jurisdiction over the ejidos of Matamoras on the now Texas side of the Rio Grande, previous to and say up to the American occupation in 1846?

Int. 7. If in answer to the next preceding interrogatory you shall state that the corporation of Matamoras exercised jurisdiction over the lands of the ejidos on the Texas side of the Rio Grande, please state in what manner, and by what acts, and between what dates was such jurisdiction exercised, and what was the character of such jurisdiction. Please answer specifically to each division of this interrogatory.

Int. 8. If in answer to the next preceding interrogatory you shall state that the corporation of Matamoras exercised jurisdiction over the said ejidos by assigning "labors" and collecting rents from the

203 labor holders, can you remember the names of those holding labors on the now Texas side of the Rio Grande under the city of Matamoras? and, if yea, please enumerate them or as many of them as you can remember; and where were their labors situated with respect to the present city of Brownsville?

Int. 9. What were the boundaries of the respective labors on the Texas side of the Rio Grande, which you knew, and which you can remember; the length of time they were possessed by each person possessing the same; and in what manner held, and between what dates? Please answer specifically each division of this interrogatory.

Int. 10. What use was made of the labors by their holders, and in what manner were they occupied?

Int. 11. Were there or not any exceptions in favor of any one, and if yea, whom, as regards the requirement to pay rent for the use and occupation of labors?

Int. 12. What official collected the rent from the labor-holders?

Int. 13. What use, if any, was made of the lands of the ejidos not embraced in labors, and how long did such use continue?

Int. 14. What was the rent collected by the corporation of Matamoras from the several labor occupants?

Int. 15. Did you know the deceased, Doña Maria Francisca

204 Cavazos; where did she reside; and about what year did she die?

Int. 16. Was she alive when Matamoras was first declared to be a town, and where did she then reside?

Int. 17. Did or not the said Doña Francisca Cavazos hold a labor in the ejidos on the now Texas side of the Rio Grande, at the time Mata-

moras was first established as a town, and if yea, what, after this, became of it? Did she or not pay rent to Matamoras for the said labor?

Int. 18. If you shall say that Juan Estevan Gutierrez succeeded her in the said labor, or bought it of her, how long did he occupy it? and state who succeeded said Juan Estevan in the said labor. Did or not he pay pay rent to Matamoras for the said labor?

Int. 19. If you shall state that Miguel Salinas succeeded said Juan Estevan in the possession of said labor, state how long he continued to hold the same. Did or not said Salinas pay rent to Matamoras for said labor?

Int. 20. In what manner or character, as to claim, did the several occupants of said labor hold it?

Int. 21. Where, in reference to the present state of things, was the said labor situated, and by what other labors, if any, was it bounded?

Int. 22. How long was it, more or less, before her death, that she was succeeded by Juan Estevan in the possession of her said labor?

205 Int. 23. Did you or not know Rafael Garcia Cavazos; and, if yea, what relation or kin was he to said Francisca Cavazos and to Maria Josefa Cavazos, one of the defendants in this cause?

Int. 24. Did or not said Rafael Garcia Cavazos have a labor in the ejidos, now on the Texas side of the Rio Grande, and if yea, where was it located; by what other labors was it bounded; who first opened and established it, and when? How did he hold it as to claim, and did or not he pay rent to Matamoras for the use of it? Where did he live before occupying said labor? Please state fully all you know of each division of this interrogatory.

Int. 25. Do you know or not John Treanor; and if yea, what relation or kin is he to the said Francisca Cavazos and the said Maria Josefa Cavazos? State fully.

Int. 26. Did or not the said John Treanor have a labor within the ejidos of Matamoras on the Texas side of the Rio Grande; and if yea, when was it opened or established, and where was it situated, and did he or not pay rent to Matamoras?

Int. 27. Did or not Francisca Cavazos, in her lifetime, ever dispute the possession of any of the labor-holders under Matomoras? State fully.

Int. 28. Did or not the defendant, Maria Josefa Cavazos, or any person for her, ever dispute the possession of any of the labor-holders under Matamoras?

POWERS & MAXAN,
Att'ys for City of Brownsville.

206 Service of the foregoing interrogatories was had on me by handing me the same for the purpose of propounding cross-interrogatories on the 10th day of May, 1875.

B. B. SEAT,
Att'y for Def't.

Statement of facts continued.—Cross-interrogatories propounded to Leocadio Salinas, José D. Garcia, Encarnation Salas, Lino Barcenas, Felipe Gutierrez, and Leonardo Garza.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS, CHARLES STILLman, & William G. Hale. } No. 202.

In U. S. circuit court, eastern district of Texas, at Galveston. Transferred from Brownsville.

Cross-interrogatories propounded by defendant to the witnesses Agapito Longoria, Juan Prado, José Maria Villerial, and Rafael Leal Cavazos, and the other witnesses named in the foregoing direct interrogatories.

Cross-int'y 1st. If in answer to direct interrogatory number three you say you know the lands of the ejidos of Matamoras as they originally were, and the quantity of land comprising them, please state definitely what were your means of information. Did you make the original survey of said ejidos, or did you assist in doing so; and, if nay, from what source or sources do you derive your knowledge respecting the extent and quantity of land embraced in the ejidos of Matamoras, as aforesaid? State definitely and fully.

2nd. If in answer to direct interrogatory the sixth you say that Matamoras exercised jurisdiction over the ejidos, now on the Texas side of the Rio Grande River, up to the date of the American occu-
207 pation in 1846, state in what manner such jurisdiction was exercised, and all your means of knowing such fact, and whether such jurisdiction, if any, was asserted and exercised by the corporation of Matamoras, in accordance with law.

3d. If in answer to direct interrogatory the eighth you say that the corporation of Matamoras exercised jurisdiction over said ejidos by assigning labors and collecting rents from the labor holders, state particularly by what authority said assignments were made and the said rents collected, and were the same made in accordance with the constitution and laws of the State of Tamaulipas.

4th. Do you know who was the original grantee of the lands embraced within the ejidos of the city of Matamoras, and, if so, state who the said original grantee was and who were his heirs, and where did they reside at the time Matamoras was declared to be a town, and did or did not such heirs claim and continue to claim the lands embraced within the said ejidos after the act of expropriation and after the said city of Matamoras was declared to be a town?

5th. What kin was Francisca Cavazos, Dña. Maria Josefa Cavazos, and Rafael Garcia Cavazos to the original grantee of said lands, Don José Salvador de la Garza?

208 6th. Are acquainted with the constitution and laws of the State of Tamaulipas, as they were in 1826, and up to 1841, upon the subject of the expropriation of private lands for public uses; and, if so, had such laws been complied with in the expropriation of the ejidos of Matamoras, and had a complete and perfect title vested in the said city of Matamoras under the law expropria ing private lands for public uses, when the said assignment of labors was made, and when said rents were collected by the corporation of Matamoras?

7th. Under the laws of Tamaulipas for the expropriation of private

lands to public uses—as for ejidos, for a town, is it not necessary to identify, survey, and appraise the lands so expropriated, and then is it not necessary to pay or to offer to pay the owners of such lands an indemnity therefor; and, if so, was there an identification, survey, and appraisement of the lands embraced within the said ejidos of Matamoras, including the said labors on the Texas side of the Rio Grande River, and were the owners of said lands and labors paid the said indemnity? State fully and minutely all the information you may have on this subject.

8. Do you know of any other matter or thing in relation to the
209 questions at issue in this suit; and, if yea, state fully and at large all you may know in your answer to this interrogatory.

WILLIAM G. HALE,
JAS. R. COX, &
B. B. SEAT,
Att'ys for D'f'ts.

Statement of facts continued.—Answers of Leocadio Salinas to interrogatories propounded.

No. 202.

To the first interrogatory he answers: 1. My name is Leocadio Salinas; I am sixty-five years of age; I was born in the year 1810; I have lived all my life in the vicinity of Matamoras and Brownsville. I was born in the rancho of Santa Rosalia, on this side of the Rio Grande.

2. To the second interrogatory he answers: Since it was founded. When I was born Matamoras was a rancho called El Refugio; it was the congregation of Refugio, and afterwards it was made a town, and after that a city.

3. To the third interrogatory he answers: I know the ejidos of Matamoras as they existed originally; they were composed of four sitios of land, one league in each cardinal direction. I acted and was present at the first survey which was made of the ejidos on this side of the river. It was made by Cayetano Medrano. I helped in the opening of the pathways and in carrying the cord. Cayetano Medrano was the surveyor appointed by the corporation or by the State. The lower or eastern line started one league east of the centre of the principal square of Matamoras towards the magnetic north; it crossed the river through the field of the deceased Don Domingo de la Garza, called the
210 Nogales, which is about a league from Brownsville down the river. That line ended one league from its point of beginning, on the edge of the wood where the plain of San Cristoval ends, on the other side of the resaca of the same name. From there the survey started towards the west two leagues. I do not remember at what point this line ended, but I know that a large ebony or mezquite tree was cut down and planted as a corner. From there the survey started towards the south till it struck the Rio Grande; from there it crossed the river to the Mexican side. I did not cross the river. I remained on this side where that western line struck the river. The pathways were opened on all of the three lines which I have just mentioned. I helped to open them, as I have stated. I do not now remember the name of the judge who directed the survey. I believe it was Don José Maria Villareal. I remember that Don José Maria Tovar was present. Some years after there was a second survey, at which I was present also, on this side of the river, but not on the other side. The lines came out dif-

ferent from the first ones. The lower or eastern line came out higher up than the first; a little below Santa Rosalia, on its edge. There were pathways cut also, which are even now to be seen in some parts. The square around the ejidos was also made. I heard, and it was spoken of, that the second survey was made for the accommodation of the
211 neighboring proprietors on the lower part, because they did not agree to the first survey, which took cleared land from them.

4. To the fourth interrogatory he answers: Yes; they extended to this side of the Rio Grande.

5. To the fifth interrogatory he answers: Santa Rosalia, Los Tomates, the Garrison of Fort Brown, Brownsville, Freeport, and Rancreño.

6. To the sixth interrogatory he answers: The city or corporation of Matamoras.

7. To the seventh interrogatory he answers: The labors were surveyed by said corporation and possession given to the labor holders, and an annual rent was collected of them for the use of their labors. The corporation of Matamoras began to give labors since the first survey of the ejidos was made. That was the year I married. I married when I was seventeen years old. This jurisdiction of Matamoras continued till the American occupation in 1846, and said corporation exercised the same as owner of the ejidos.

8. To the eighth interrogatory he answers: I remember some of them, among them my father, Miguel Salinas, in Santa Rosalia, Jacinto Martinez, Vicento Hinojosa, my first father in-law Civilo Tanguma, Feliciano Garcia, Ramon Hinojosa, Bernardo Garcia, Pablo Falcon, Miguel de los Santos, Luis Falcon, Isidro Falcon, Manuel Subariego, Vicente Valerio, Narciso Cavazos, Manuel Palacios, Juan Treanor, Antonio Salinas, Francisco Fragosa, Manuel Trevino Canales, Rodrigo
212 Hinojosa, Juan Francisco Vela, Santos Ybarbo, Antonio Ramirez, senior; Catarina Vela, my aunt Doroteo Zamoro, my second father-in law; Ignacio Flores, Juan Estevan Gutierrez, Juan de la Fuente, Leandro Martinez, Nazario Garza, Vicente Salazar, Felipe Gloria, Tomas Farias, Elias Marquez, Pablo Villareal, Pedr. Flores, Onofre Rubaicaba, Enrique Villareal, Rafael Villareal, Felipe Garza, Antonio Garza, José Maria Garcia, Rosa Flores, Rafael Morales, Manuel Barcenas, Manuel Vela, Agapite Vela, Leandro Martinez, Antonio Fernandez, José Maria de los Santos, Vicente Ramirez, Macedonio Ramirez, Rafael Garcia Cavazos, Ignacio Delgado, Miguel Padron, José Maria Vera, Miguel Mendoza, Augustin Piernas. There were a great many more labores, but I do not remember them now. They were situated above, below, in the rear of Brownsville, and also on the place where said city is situated.

9. To the ninth interrogatory he answers: The labor of my father was bounded on the south by that of Agapito Vela, those of Agustin Piernas and Miguel Mendoza, and one of the two labors of Juan Estevan Gutierrez; on the north by a lane which led to Santa Rosalia; on the east by that of Luz Rendon; on the west by that of Juan Francisco Vela and that of Santos Ibarbo. That of Jacinto Martinez on the south by the Rio Grande, on the north by the rancho of Santa Rosalia, on the east by a lane which led to the river, on the west by the central lane of the labors. That of Vicente Hinojosa by the said central lane;
213 on the north by Tomas Farias; on the east by the rancho of Santa Rosalia; on the west by the labor of Antonio Falcon. That of Cirilo Tanguma on the south was bounded by the Rio Grande, on the north by the lane which went through the center of the labor; on the east by the labor of Juan Martinez; on the west by the said lane. That of Feliciano Garcia on the south by the labor of Antonio Fernandez;

on the north by that of Rafael Villareal; on the east by the central lane, and on the west by the Rio Grande. That of Ramon Hinaposa, on the south by the Rio Grande; on the north by the rancho de las Tomates; on the east by the labor of Bernardo Garci; on the west by the river.

The labor of Benardo Garcia on the south by the river; on the north by the rancho de las Tomates; on the east by the river, and on the west by the labor of Ramon Hinojosa. That of Pablo Falcon was bounded on the south by the river, on the north by Miguel de los Santos; on the east by that of Luis Falcon, and on the west by the lane which divides it from Narciso Cavazos. That of Louis Falcon on the south by the river; on the north by the central lane; on the east by Ignatio Delgado, divided by a lane; on the west by Pablo Falcon. That of Miguel de los Santos, on the south by that of Pablo Falcon; on the north by the central lane; on the east by the same lane which
214 goes towards los Tomates; on the west by the said lane. That of Manuel Sabariego on the south by the same lane; on the north by vacant land of the ejidos, and on the east by the lane which divides it from Vicento Valerio, and on the west by the outside labor of Bernardo Garcia, called "Los Novillos." That of Vicente Valerio, on the south by that of Ignacio Delgardo, by a lane; on the north by vacant land of the ejidos; on the east by vacant land of the ejidos; on the west by Manuel Subariego divided by a lane. That of Narciso Cavazos on the south by the river, on the north by the central lane which divided it from Manuel Palacios, on the east by Pablo Falcon and Miguel de las Santos, divided by a lane; on the west by Rafael Garcia Cavazos, divided by a lane. That of Antonio Salinas, on the south by the outside labor of Bernardo Garcia, on the north by vacant land of the ejidos, on the east by vacant land of the ejidos, and also on the west by vacant land of the ejidos. That of Juan Francisco Vela, on the south by the river; on the north by that of Manuel Vela; on the east by that of Miguel Salinas, my father; on the west by the river. That of Santos Ibarbo, on the south by that of Manuel Vela; on the north by a lane which divides it from Catarina Vela; on the east by a lane which divides it from my father, Miguel Salinas; on the west by the river.

215 Juan Estevan Gutierrez had two labors, and one of them, which he had from Maria Francisco Cavazos, was bounded on the south by the lagoon; on the north by the labor of Rodrigo Hinojosa; on the east by that of Luz Rendon, and on the west by a lane which divides it from Juan Francisco Vela, Manuel Vela, and Santos Ibarbo.

The other labor of Juan Estevan Gutierrez was bounded on the south by the Rio Grande, on the north by Augustin Piernas and Miguel Mendoza, on the east by Rafael Garcia Cavazos, and on the west by the river. That of Elias Marquez on the south by the labor of Tomas Farias, on the north by that of Ignacio Delgado, which afterwards was that of Telesfero Garcia, on the east by the same labor of Delgado, on the west by the river. That of Pablo Villareal (who had two labors), one of them was bounded on the south by the river, and the north by that of Farias, on the east by the river, and on the west by a lane. La de Rafael Villareal, on the south by Feliciano Garcia divided by an alley, on the north by Cirilo Tanguma, on the east by a lane, and on the west by the river. That of Manuel Vela was the island which is in the garrison of Fort Brown, surrounded by the lagoon when the river is high. That of Agapito Vela, on the south by that of Agustin Piernas, on the north by the watering place of the lagoon, on the east
216 by the lagoon, on the west by a lane which divided it from that of

Juan Francisco Vela. That of Antonio Fernandez, on the south by that of Manuel Travino Canales, on the north by Feliciano Garcia, on the east by a lane, which divided it from Antonio Hinojosa, on the west by the lagoon. That of Rafael Garcia Cavazos, which was at first that of Maria Francisca Cavazos, on the south by the river, on the north by Luz Rendon, on the east by Narciso Cavazos, and on the west by the lagoon and that of Agustin Piernas, and on the east by that of Rafael Garcia Cavazos. That of Ignacio Delgado, on the south by Tomas Farias, on the north by the central lane, on the east by the rancho of Santa Rosalia, and on the west by the labor of Luis Falcon. That of Miguel Padron, on the south by the lagoon, on the north by the labor of Manuel Treviño Canales, on the east by Antonio Hinofosa, on the west by the same lagoon and Manuel Treviño Canales. That of Miguel Mendoza, on the south by that of Juan Estevan Gutierrez, on the north by that of Agapito Vela and that of Agustin Piernas, on the east by Piernas, and on the west by a lane. That of Agustine Piernas,
217 on the south by that of Juan Estevan Gutierrez, on the north by that of Agapito Vela, on the east by the lagoon, and on the west by that of Miguel Mendoza.

I do not remember the boundaries of more labors. From the time the ejidos were surveyed some of the possessors commenced to take their labores, and others took afterwards, and the labors continued to be given and possessed up to the American occupation. The labors I have mentioned were possessed under the title of Matamoras; I cannot fix the dates.

10. To the tenth interrogatory he answers: Cultivating them, planting them in corn, cotton, beans, and other products and fruits. They occupied them with their families, those of them that had families; and they maintained their labors always under fence.

11. To the eleventh interrogatory he answers: There was no exception. All had to pay punctually the annual tribute for the use of their respective labors.

12. To the twelfth interrogatory he answers: There were persons commissioned to collect the rents by the corporation of Matamoras.

13. To the thirteenth interrogatory he answers: The inhabitants made a general use of wood, grass, brush for fences, without cost; the land of the ejido not occupied by the labors was for the common use of the inhabitants. This use lasted from the time the ejidos were established up to the American occupation, and there is no impedi-
218 ment even to day to this use within the ejidos.

14. To the fourteenth interrogatory he answers: The rent was proportioned to the size of the labor. A labor of the regular size paid twelve reals (one dollar and fifty cents) yearly rent. A labor consisted of four hundred varas square.

15. To the fifteenth interrogatory he answers: I knew her very well; her residence was in Matamoras; at times she lived on her labor for a spell; I was temporarily absent from the vicinity of Matamoras when she died; it must have been about the year 1835.

16. To the sixteenth interrogatory he answers: Yes; she was alive then and she lived in Matamoras.

17. To the seventeenth interrogatory he answers: Yes; she had a labor in the ejidos on this side of the river at the time enquired about; afterwards Don Rafael Garcia Cavazos and Juan Estevan Gutierrez occupied it; I do not know whether she paid rent, but necessarily she paid it, for every one had to pay, and although she remained with her labor,

afterwards she held it as ejido land under the corporation of Matamoras like all the others.

18. To the eighteenth interrogatory he answers: Juan Estevan Gutierrez occupied it, but I do not remember the time he remained with it.

My father, Miguel Salinas, succeeded Juan Estevan Gutierrez in
219 the possession of said labor. Of course Juan Estevan Gutierrez paid the annual rent.

19. To the nineteenth interrogatory he answers: In the year of the great cholera, which was in 1833 or 1834, my father entered into the possession of that labor and occupied it till the American occupation. Yes; he paid rent to Matamoras.

20. To the twentieth interrogatory he answers: Its several possessors held it under Matamoras.

21. To the twenty-first interrogatory he answers: A part of said labor is inside the garrison of Fort Brown, and the other part where the settlement of Brownsville is now. It was bounded on the south by the labor of Agapito Vela, those of Agustin Piernas and Miguel Mendoza, and one of the two labors of Juan Estevan Gutierrez, on the north by a lane which lead to Santa Rosalia, on the east by the labor of Luz Rendon, on the west by those of Juan Francisco Vela and Santos Ybarbo.

22. To the twenty-second interrogatory he answers: Before she died Juan Estevan Gutierrez entered into the occupancy of the labor, but I do not know how long.

23. To the twenty-third interrogatory he answers: Yes; I know Rafael Garcia Cavazos. He had married Maria Josefa Cavazos, who was a niece of Maria Francisca Cavazos.

24. To the twenty-fourth interrogatory he answers: He occupied a part of the same labor of Maria Francisca Cavazos which I have
220 mentioned. I have stated in answering the ninth interrogatory the labors it was bounded by. It was situated to the southeast of Brownsville. Doña Maria Francisca Cavazos opened and established that labor, but I do not know when. Rafael Garcia Cavazos recognized the right of ownership of the corporation of Matamoras. Yes; he paid rent to the city of Matamoras. He lived in Matamoras before occupying that labor. I knew him there for the first time; said labor was within ejidos in Texas.

25. To the twenty-fifth interrogatory he answers: I know John Tranor. He is a son-in-law of Doña Maria Josefa Cavazos, for he married a daughter of this lady, who was a niece of Maria Francisca Cavazos.

26. To the twenty-sixth interrogatory he answers: Yes; he had a labor in the ej dos on this side, which he acquired from Luz Rendon and Gregoria Briseño. I do not know when it was opened or established. It was situated to the northeast of Brownsville about less than a mile. Of course he paid like the others.

27. To the twenty-seventh interrogatory he answers: She never disturbed any of the labor-holders nor disputed their possessions.

28. To the twenty-eight' interrogatory he answers: While these ejidos were under the jurisdiction of Matamoras neither Maria Josefa Cavazos nor any person for her disputed or disturbed the possessions of any of the labor-holders, either in court nor out of it.

221 *Statement of facts continued.—Answers of Leocadio Salinos to cross-interrogatories pr'p'n'd.*

1. To the first cross-interrogatory he answers: My means of information are that I have lived most all my life on these lands. I was present

at the survey on this side of the Rio Grande, and the quantity of one league was completed from the center of the principal square of Matamoras on the line drawn north, and as the square was formed necessarily there were four sitios.

2. To the second cross-interrogatory he answers: The jurisdiction of the corporation of Matamoras was exercised by it giving labors and collecting rents as the owner of the lands, and was according to law, as I understand. I know it, because I have seen it exercised. I am not a lawyer.

3. To the third cross-interrogatory he answers: By authority of the State of Tamaulipas, which had granted the ejidos to Matamoras, I believe these acts were done in conformity with the constitution and laws of Tamaulipas. I repeat that I am no lawyer.

4. To the fourth cross-interrogatory he answers: I understand that Done José Salvador de la Garza was the original grantee of the lands mentioned on the Texas side. I do not know who was the original grantee on the Mexican side. The Prietas, the Tejerinas, and the Cavazos were the heirs of Salvador de la Garza, whom I knew. They lived in Matamoras at the time enquired about, and besides they had ranchos on these lands. They did not claim or continue to claim the
222 lands embracing the said ejidos after the act of expropriation and after the said Matamoras was declared to be a town.

5. To the fifth interrogatory he answers: Maria Francisca Cavazos married with Blas Maria de la Garza, who was a son of José Salvador de la Garza. Maria Josefa, a niece of Maria Francisca Cavazos and Rafael Garcia Cavazos, married with the said Maria Josefa Cavazos.

6. To the sixth cross-interrogatory he answers: I have no knowledge of that whereof I am asked, because I have not studied law, nor do I know the laws of Tamaulipas nor its constitution on the subject of expropriation of lands.

7. To the seventh cross-interrogatory he answers: I say again that I do not know the laws of Tamaulipas concerning the expropriation of private lands for public uses. I cannot answer the latter part of this interrogatory, because I do not know whether the original owner of said lands were paid any indemnity for the same.

8. To the eighth cross-interrogatory he answers: I know nothing more concerning the issues pending in this cause.

(Signed) LEOCADIO SALINAS.

Statement of facts continued.—Answers of José D. Garcia to interrogatories.

No. 202.

1. To the 1st interrogatory he answers: My name is José D. Garcia; 53 years of age; farmer and stock raiser; I was born about two
223 leagues above Matamoras, and have lived in this vicinity since then. I have lived in Santa Rosalia since then.

2. To the 2nd interrogatory he answers: I have known the corporation of Matamoras since I had the use of my reason.

3. To the 3rd interrogatory he answers: I know the lands of the ejidos of Matamoras as they existed originally. They consisted of square sitios or leagues of land. I have seen the path which marks the lower line ever since my childhood. The lower, or rather the eastern, line passes below the rancho Santa Rosalia, where I live. The western line passes above Ramireno, between that point and the rancho Los Pretos.

4. To the fourth interrogatory he answers: The ejidos of Matamoras did extend beyond the Rio Grand' to that which is now Texas.

5. To the fifth interrogatory he answers: Santa Rosalia Los Tamatoes, the garrison of Fort Brown, Brownsville, Freeport, and Ramerino.

6. To the 6th interrogatory he answers: The city of Matamoras exercised jurisdiction over the ejidos which are on the Texas side for many years previous to the American occupation in 1846, and up to that time.

7. To the 7th interrogatory he answers: The city of Matamo-
224 ras gave titles of possession for labors within said ejidos, and gave the possession of them to their possessors, and collected a yearly rent for the use of said labors. I cannot fix the date as to when said jurisdiction began, nor between what dates it was exercised, but I do know that when I could use of my reason I saw her exercise the same, for there existed then already some labors, and they were opening others. The city exercised jurisdiction as owner of the lands of the ejidos, and the labor holders paid the annual tribute.

8. To the 8th interrogatory he answers: I remember many possessors of labors in said ejidos, principally those which were situated on the lower part. Jacinto Martinez, who died in the great cholera in 1833; Vicente Hinossa, my father-in-law; Tomas Farias, Clara Farias, Elias Marquez, Rafael Villareal, Pablo Villareal, Feliciano Garcia, Juan de Dios de los Santos, Felipe de los Santos, Miguel Padron, Antonio Hinojosa, Manuel Sabariego, Vicente Valino; Bernardo Garcia, who had two labors; Ramon Hinojosa, Pablo Flores, Antonio Falcon, Telesforo Garcia, Antonio Hernandez, Luis Falcon, Manuel Hernandez, Antonio Salinas, Luis Rendon, John Treanor, Miguel de los Santos, Narciso Ca-
bozos, Francisco Vidal, Manuel Trevino Canales, Francisca Ca-
225 vazos, Miguel Salinas, Agapito Vela, Rosa Flores, Rafael Morales, Sabos Laya, Ramon Flores; Antonio Ramirez, padre; Antonio Ramirez, hijo; Antonio Garza, Sabas Garza, Manuel Barcenas, Francisco Frgosa, Onofre Rubalcaba, Leandro Martinez, Catarine Vela, Vicente Salazar, Francisco Farias, Nasario Garza, Felipe Gloria, José Maria de los Santos, Termin Salas, Vicente Ramirez, Macedoni Ramirez, Pedro Flores, Civilo Tanguma, which is the labor that I have now; José Maria Vera, Miguel Mendoza, Ygnacio Flores. I don't remember any more, although there were others. These labors were situated below and above, and within the site of the town of Brownsville, and in all directions on the Rio Grande.

9. To the 9th interrogatory he answers: The labor of Jacinto Martinez was bounded on the south by the Rio Grande, on the north by the rancho Santa Rosalia, on the east by a lane that led to the river, on the west by a lane which led through the centre of the labors. That of Vicente Hinojosa on the south by the same lane, on the north by that of Tomas Farias, on the east by the rancho Santa Rosalia, on the west by that of Antonio Falcon. That of Tomas Farias on the south by that of
Vicente Hinojosa, on the north by that of Elias Marquez, on the
226 east by vacant land of the ejidos, and on the west by that of Antonio Falcon. That of Elias Marquez on the south by that of Tomas Farias, on the north by that of Telufore Garcia, on the east by a lane, and on the west by the Rio Grande. That of Rafael Villareal on the south by a lane and by the labor belonging to my father, Feliciano Garcia, on the north by that of Civilo Tanguma, which I have now; on the east by a lane, and on the west by the Rio Grande. That of Pablo Villareal on the south by the river, on the north by that of Clara Farias, on the east by the river, and on the west by a lane. That of Feliciano

Garcia, my father, on the south by the labor of Antonio Fernandez, on the north by that of Rafael Villareal, on the east by a lane, and on the west by the Rio Grande. That of Juan de Dios de los Santos on the south by that of Miguel Padron, on the north by that of Antonio Fernandez, on the east by that of Antonio Hinojosa, on the west by that of Felipe de los Santos. That of Felipe de los Santos on the south by the river, on the north by that of Antonio Fernandez, on the east by that of Juan de Dios de los Santos, and on the west by the river. That of Miguel Padron on the south by the river, on the north by that of Juan de Dios de los Santos, on the east by that of Antonio Hinajosa,
227 on the west by that of Felipe de los Santos. That of Antonio Hinajosa on the south by the river, on the north by that of Pablo Villareal, on the east by the river, on the west by four labors, namely, the labors of Feliciano Garcia, Antonio Hernandez, Juan de Dios de los Santos, and of Miguel Padron.

The labor of Manuel Sabariego on the south by a lane which divides it from that of Luis Falcon; on the north by vacant land of the ejidos; on the east by lane dividing it from that of Vicente Valerio, and on the west by the outside labor of Bernardo Garcia. That of Vicente Valerio on the south by a public road to Santa Rosalia; on the north by vacant land of the ejidos; on the east by the lower line of the ejidos, and on the west by a lane which separated it from that of Manuel Sabariego. That of Bernardo Garcia, which was situated outside, and was known as the labor "de los Novillos," on the south by a road that led to Santa Rosalia; on the north by that of Antonio Salinas; on the east by that of Manuel Sabariego; on the west by a lane which separated it from that of Manuel Hernandez. That of Ramaro Hinojosa on the south by the river and the inner labor of Bernardo Garcia; on the north by the rancho de los Tomatoes; on the east also by the inner labor of
228 Bernardo Garcia, and on the west by the river. That of Pablo Falcon on the south by the river; on the north by that of Miguel de los Santos; on the east by that of Luis Falcon, and on the west by a road that led to rancho los Tomates and by the lake. That of Antonio Falcon on the south by that of Civilo Tanguma; on the north by that of Tomas Farias, Vicente Hinojosa, and Elias Marquez; on the east by a lane, and on the west by the river. That of Antonio Hernandez on the south by that of Felipe de los Santos and Juan di Dios de los Santos; on the north by that of Antonio Fernandez; on the east by that of Antonio Hinojosa; on the west by the Rio Grande. That of Luis Falcon on the south by a lane; on the north by a lane which separated it from that of Manuel Sabariego; on the east by the labor of Felisforo Garcia, and on the west by that of Pablo Falcon. That of Civilo Tanguma on the south by the river; on the north by the lane which to the centre of the labors; on the east by that of Jacinto Martinez, and on the west by the same lane.

I don't remember of the boundaries of the others. I can't tell how long they possessed them, nor the dates of the possession; but since my childhood I have known the most of them in these labors.
229 They held them under Matamoras, which they recognized as the owner.

10. To the 10th interrogatory he answers: The general use made by the labor-holders of these labors was to plant them and cultivate them; to build the houses in which they lived. The holders held the labors under the city of Matamoras.

11. To the 11th interrogatory he answers: There was no exception.

All were under obligation to pay the rent to Matamoras for the use of the labors.

12. To the 12th interrogatory he answers: There were agents to collect the rents, and they gave receipts.

13. To the 13th interrogatory he answers: The use made of the lands of the ejidos which were not labors was in common for all the inhabitants for grazing their stock and animals, for cutting of firewood, grass, and brush, and other products of the land, for which nothing was charged. This common use lasted from the foundation of the ejidos, and still continues.

14. To the fourteenth interrerrogatory he answers: Twelve reals yearly for each labor.

15. To the 15th interrogatory he answers: I knew Doña Maria Francisca Cavazos; when I knew her she lived in her little house on her labor, near the Tomates, and she had also a house in Matamoras. I don't remember in what year she died.

230 16. To the 16th interrogatory he answers: From the age of the said lady when I knew her I judge that she was alive when Matamoras was declared a town. I do not know where she lived then.

17. To the 17th interrogatory he answers: She had a labor in the said lands of the ejidos in Texas, which was called "Madame Francisca's rancho de la Tanja." She had a part of that labor close to the river on the lower side. I have heard that Juan Estevan succeeded her in the possession of the upper part of said labor, and that after Juan Estevan Don Miguel Salinas came in possession of that part. I don't know whether Doña Francisca Cavazos paid rent to Matamoras.

18. To the 18th interrogatory he answers: I don't know how long Juan Estevan occupied said labor or whether he paid rent to Matamoras. As I said before, Miguel Salinas had that labor after him.

19. To the 19th interrogatory he answers: I don't exactly remember how long Miguel Salinas occupied said labor, but he was already in possession of it in the year 1836, and he kept it until the American occupation in 1846. I don't know of my own knowledge that Miguel Salinas paid rent to Matamoras, but there was a general rule for all to pay.

20. To the 20th interrogatory he answers: The labor-holders held the labors under the city of Matamoras, who was the owner of said
231 lands, and the various possessors of this labor must have held it in the same manner.

21. To the 21st interrogatory he answers: The labor of Doña Francisca Cavazos was on the southeast of the present city of Brownsville; on the south it was bounded by the river, on the north by the labor of Luz Rendon, on the east by the labor of Narciso Cavazos, and on the west, I don't remember.

22. To the 22nd interrogatory he answers: I don't know.

23. To the 23d interrogatory he answers: I knew Rafael Garcia Cavazos; he was the husband of Doña Maria Josefa Cabazos, who was the niece of Doña Maria Francisca Cavazos.

24. To the 24th interrogatory he answers: I saw him in possession of a labor which was a part of the labor of Doña Maria Francisca Cavazos, within the ejidos on this side of the river, as I have stated. I have already stated where it was situated; have given its boundaries and the labors which bounded on it, as far as I can remember. I don't know who opened and established it first nor when it occurred. I do not know how she held it regarding the title; I do not know personally

whether she paid rent or not to Matamoras. She lived in Matamoras before I knew her, in possession of said labor.

232 25. To the 25th interrogatory he answers: I know John Treanor; he is married to a daughter of Doña Maria Josefa Cavazos, niece to Doña Maria Francisca Cavazos.

26. To the 26th interrogatory he answers: Yes, he had a labor on the Texas side within the ejidos, to the northeast of Brownsville. It was opened or established in the years 1836 or 1837. I don't know personally that he paid rent to Matamoras, but I do know that no one was exempted from paying it.

27. To the 27th interrogatory he answers: Doña Maria Francisca Cavazos never disturbed or molested any one in the possession of the labors during her lifetime. All recognized the possession given by Matamoras.

28. To the 28th interrogatory he answers: Neither did Doña Josefa Cavazos disturb any person in the possession of his labor, nor did any one do so for her either in or out of courts, until after the American occupation, after Brownsville was established.

Statement of facts continued.—Answers of José D. Garcia to cross-interrogatories.

1. To the first cross-interrogatory he answers: My means of information are derived from the fact that I have lived on these lands since the year 1828, and ever since I have had the use of my reason I have known that the government of Tamaulipas had granted ejidos to

233 Matamoras, and they consisted of four sitios. The general talk and notoriety of the facts I have first stated and the fact of my knowing the lower path as one of the sides of the square makes me say that the ejidos consisted of four sitios.

2. To the 2nd cross-interrogatory he answers: The jurisdiction of Matamoras was exercised by granting labors and collecting the yearly rent. The reason why I say so is because I have witnessed it. I believe that said jurisdiction was exercised in accordance with the law, for it was never disputed.

3. To the 3d cross-interrogatory he answers: The authority by which the city of Matamoras granted labors and collected the rents, came to her from the government of Tamaulipas, who granted to her the ejidos. As I am no lawyer, I cannot decide whether those acts were done in conformity with the constitution and the laws of Tamaulipas.

4. To the 4th cross-interrogatory he answers: I don't know, but I have heard it said that the original grantee of the said lands on the Texas side was Don José Salvador de la Garza, and I don't know who it was on the Mexican side. His (J. S. de la Garza's) heirs were Doña Filiciano Goseascochea and Doña Estefana Goseascochea, and Doña Maria Francisca Cabazos, through her husband, Blas Maria de la

234 Garza, son of Don José Salvadore de la Garza. All of them had about the time whereof I am interrogated houses in Matamoras, and also ranches on the said land, in which they lived in turns. Matamoras was then called Refugio. I never knew or heard it said that the heirs ever claimed or continued claiming the lands comprised within the ejidos after the act of expropriation and after Matamoras was declared a town.

5. To the 5th cross-interrogatory he answers: Maria Francisca Cavazos married Blas Maria de la Garza, and Maria Josefa Cavazos, who

was the niece of Maria Francisca Cavazos, married Don Rafael Garcia Cabazos.

6. To the 6th cross interrogatory he answers: As I am no lawyer, I have no knowledge of the subject about which I am interrogated.

7. To the 7th cross-interrogatory he answers: I repeat that I am not a lawyer, and I don't know what is required or may have been required by the laws of Tamaulipas in the matter of expropriations. Neither do I know whether the owners of the lands comprised in said ejidos and labors were paid an indemification for them.

8. To the 8th cross-interrogatory he answers: I know nothing further regarding the questions pending in this suit.

(Signed) JOSÉ D. GARCIA.

235 *Statement of facts continued.—Answers of Encarnacion Salas to interrogatories propounded.*

1. To the first interrogatory he answers: Encarnacion Salas; fifty-five years of age; farmer; I have lived in Matamoras and its vicinity and Brownsville and its vicinity all my life.

2. To the 2nd interrogatory he answers: I know the corporation of Matamoras as far back as my memory can reach.

3. To the 3d interrogatory he answers: I know the lands of the ejidos of Matamoras as they existed originally. The ejidos consisted of one league of land in each cardinal direction, starting from the great square of Matamoras, and embracing four sitios of land. The greater part of the ejidos existed on the other side of the Rio Grande in Mexico, and the remainder on the side which is now in Texas. The lower or eastern line of the ejidos crosses the river near the Rancho de Santa Rosalia, about a league from Brownsville, down the river; and the upper or western line a little under a league from Brownsville, up the river. It passes near the Rancho de las Prietas, a little below, including Ramireno.

4. To the 4th interrogatory he answers: As I have stated, the ejidos extended over to this side of the Rio Grande, which is now in Texas.

5. To the 5th interrogatory he answers: There are the following localities within the ejidos on the Texas side, commencing on the
236 east and going upwards, Santa Rosalia, Los Tomates, the Garrison of Fort Brown, Brownsville, Freeport, Mansfield, which has now disappeared by being washed into the river, and the Ramireno.

6. To the 6th interrogatory he answers: The city of Matamoras exercised jurisdiction over the ejidos which are on the Texas side of the Rio Grande before and up to the American occupation in 1846.

7. To the 7th interrogatory he answers: The corporation of Matamoras exercised jurisdiction over the said ejidos, granting labors for the inhabitants who applied for them for their use; it caused them to be surveyed with the presence of its syndic attorney; it gave the possession; it collected rent from the holders of labors at the rate of twelve real by the year; it settled the differences that arose between the possessors touching the boundaries of the labors; and in general it acted as the owner of the lands. The corporation of Matamoras exercised that jurisdiction with the character of owner of the land from the farthest date I can remember until the American army came in 1846.

8. To the 8th interrogatory he answered: Those whom I remember as having labors on the Texas side of the Rio Grande, under Mata-
237 moras, are Miguel Salinas, Manuel Vela, in the island in the garrisan, Agapito Vela, Francisco Frajosa, Rodrigo Hinojosa,

Onofre Rubalcaba, Leandro Martinez, Manuel Travino Canales, Ignacio Flores, Catarina Vela, Vincente Salazar, Francisco Farias, Nazario Garza, Maximo Sirra, Antonio Hinojosa, Nicolas Cavazos, Felipe Gloria, Felix Fuentes, Prudencio Muñoz, José Maria de los Santos, Francisco Herrera, Fermin Salas, Jesus Cardenas, Vicente Ramirez, Pedro Flores, Manuel Barcenas, Sabas Garza, Antonio Garza, Antonio Ramirez (padre), Ramon Flores, Rafael Morales, Antonio Ramirez (hijo), Rosa Flores, Sabas Loya, Jose Maria Garcia, Isidoro Sanchez, Felipe Garza, Luz Rendon, Rafael Garcia Cavazos, Juan Treanor, Felipe de los Santos, Bernardo Garcia, Ramon Inajosa, Cirelo Tanjuma, Manuel Savariego, Ignacio Delgado, Santos Ibarbo, Agustin Piermas, Miguel Padron, Juan Casas, Juan Añorga, Jacinto Ramirez, Jose Maria Treviño, and others whom I do not remember. Some of these labors were below and above where Brownsville stands now, and some in the rear, but all of them were in the ejidos.

9. To the 9th interrogatory he answers: I cannot state what were the boundaries of each of the labors I have mentioned, because I do
238 not remember; but I can do so as to some of them. The labor of Fermin Salas was bounded on the south by the Rio Grande, on the north by a lane of Ramireno, on the east by a public road, and on the west by the labor of Maximo del Castillo. The labor of Maximo Castillo, on the south by the Rio Grande, on the north by a lane of the Ramireno, on the east by the labor of Fermin Salas, and on the west by the labor of Juan Ramirez. The labor of Juan Ramirez, on the south by the labor of Maximo Castillo, on the north by that of Manuel Barcenas, on the east by that of Macedonio Ramirez, and on the west by the Rio Grande. The labor of Macedonio Ramirez was bounded on the south by the levee or street of the Ramireno, on the north by that of Manuel Barcenas, on the east by that of Pedro Flores, on the west by that of Juan Ramirez. The labor of Manuel Barcenas, on the south by that of Juan Ramirez, on the north by that of Sabas Garza, on the east by a public road, and on the west by the Rio Grande. That of Sabas Garza, on the south by that of Manuel Barcenas, on the north by a lane which goes to the Rio Grande, on the east by a public road, and on the west by the Rio Grande. That of Antonio Garza was bounded on the south by Sabas Garza, on the north by that of Antonio
239 Ramirez, senior, on the east by that of Sabas Loya, and on the west by the Rio Grande.

The labor of Antonio Ramirez, senior, on the south by that of Antonio Garza, on the north by the western line of ejidos, on the east by the labor of Ramon Flores, and on the west by the Rio Grande. The labor of Sabas Loya on the south by a lane going to the Rio Grande, on the north by that of Ramon Flores, on the east by a public road, and on the west by that of Antonio Garza. That of Ramon Flores, on the south by that of Sabas Loya, on the north by that of Rafael Morales, on the east by a public road, and by the west by that of Antonio Ramirez, senior. That of Rafael Morales, on the south by that of Ramon Flores, on the north by the western line of the ejidos, on the east by a public road, and on the west by that of Antonio Ramirez, senior. The labor of Antonio Ramirez, junior, was bounded on the south by a vacant piece of the ejidos, on the north by a lane which divided it from that of Sabas Loya, on the east by a public road, and on the west by that of Sabas Garza. The labor of Jesus Cardenas was bounded on the south by the lane of the Ramireno, on the north by the labor of Isidoro Sanchez, on the east by that of Francisco Herrera, and on the west by that of José Maria Treviño.

240 The labor of José Maria Treviño was bounded on the south by the lane of Ramireño, on the north by that of Juan Casas, on the east by that of Jesus Cardenas, and on the west by that of José Maria Vera. That of José Maria Vera on the south with a lane of the Ramireño, on the north by that of Vicente Ramirez, on the east by that of José Maria Treviño, and on the west by the same lane of the Ramireño. That of Vicente Ramirez was bounded on the south by that of José Maria Vera, on the north by the lane of the Ramireño, on the east by that of Juan Casas, and on the west by the same lane of the Ramireño. That of Juan Casas on the south by that of José Maria Treviño, on the north by a lane of the Ramireño, on the east by that of Jesus Cardenas, and on the west by that of Vicente Ramirez. The labor of Pedro Flores on the south by the lane of Ramireño, on the north by the public road, on the east by that of José Maria Garcia, and on the west by the lane of the Ramireño. The labor of José Maria Garcia on the south by the lane which divides it from Isidoro Sanches, on the north by a public road, on the east by a public road and on the west by a public road. The labor of Isidoro Sanchez on the south by the labor of Jesus Cardenas,
241 on the north by a lane which divides it from that of José Maria Garcia, on the east by a public road and on the west by a lane of the Ramireño.

The labor of Felipe Garza was bounded on the south by a public road, on the north by a public road, on the east by a public road, and on the west by a public road. I do not remember any others. I remember these because they are of the neighborhood where I have lived. I know and remember some of these labors since before the year 1832 in the possession of their holders. I do not know how many years before that date they had been so possessed. Afterwards I saw others opened from that date up to 1842, and in the possession of their holders. These labores had been obtained from, and were held under, the city of Matamoras; many of them before 1832, down to the American occupation; in many cases down to the present time. I cannot fix the dates with more particularity, nor the length of time the labors were possessed by the persons I have mentioned. They possessed them under Matamoras, the latter being the owner.

10. To the 10th interrogatory he answers: The use of the labors made by the possessors was by planting and cultivating them; improving them and building their houses on them, fencing them in and
242 clearing them as they needed them. The possessors lived on the labors themselves, and these were always under fence.

11. To the 11th interrogatory he answers: There was no exception whatever in favor of any one concerning the obligation to pay rent to the corporation of Matamoras for the use and occupation of the labors.

12. To the 12th interrogatory he answers: The corporation of Matamoras employed a commissioner or agent to collect the rent of the labors. Vicente Ramirez, at one time, was commissioned for that purpose. Sometimes the possessors paid the rent in the hall of the ayuntam'ento of Matamoras.

13. To the 13th interrogatory he answers: Common use was made of the land of the ejidos which was not labors in pasturing animals, cutting brushwood for fences, and fuel for domestic and other common uses of the inhabitants. That use had lasted since the ejidos were founded till the present time.

14. To the 14th interrogatory he answered: The rent which the corporation of Matamoras collected was according to the amount of land

which each labor contained. As a regular thing the rent was twelve reals by the year.

15. To the 15th interrogatory he answers: I know the deceased Doña Maria Francisco Cavazos. I do not remember when she died.

243 16. To the 16th interrogatory he answers: I remember having seen Doña Maria Francisca Cavazos about the year 1832, and from her age at that time, certainly she was alive when Matamoras was erected into a town. She was then an aged lady. I do not know where she resided at the time last mentioned.

17. To the 17th interrogatory he answers: The labors which I have mentioned as of Rafael Garcia Cavazos was that of Doña Francisca Cavazos, and he succeeded her in the possession of a portion of the said labor. As to the other portion, she was succeeded by Juan Estevan Gutierrez. I do not since when she had that labor. I do not know whether she paid rent to Matamoras. Said labor was situated on the Texas side.

18. To the 18th interrogatory he answers: I know Juan Estevan Gutierrez, and after him his widow, in possession of said labor of Doña Maria Francisca Cavazos, but I do not know how long he remained in possession. After that Miguel Salinas had it. I do not know whether Juan Estevan Gutierrez or his widow paid rent to Matamoras, but I know that there was no exception in favor of any one concerning that obligation, and it is not to be doubted that they paid it.

19. To the 19th interrogatory he answers: Miguel Salinas succeeded the widow of Juan Estevan Gutierrez in the possession up
244 to the occupation by the American Army. I do not know when he obtained the labor. I do not know of my own knowledge that he paid rent, but I know that all those who had labors were obliged to pay rent to Matamoras.

20. To the 20th interrogatory he answers: The possessors of the labors held their labors by having applied for the same to the city of Matamoras. Some of them took out papers, others not, but all of them held their possessions under Matamoras. Besides this I do not know regarding the said labor.

21. To the 21st interrogatory he answers: The labor of Maria Francisca Cavazos was bounded in part by the lagoon in the garrison of Fort Brown, and extended a little into which is now the settled portion of Brownsville. The part that Miguel Salinas came to possess was situated north of the lagoon in the direction of Brownsville, and the other part was a labor which was between the estero and the Rio Grande south of the lagoon, and after her death it remained in the possession of Rafael Garcia Cavazos. I do not remember the other labors by which it was bounded, except that of Rodrigo Hinojosa, which was on the northeast side of it.

245 22. To the 22nd interrogatory he answers: I do not remember how long before the death of Maria Francisca Cavazos Juan Estevan Gutierrez succeeded her in the possession of said labor.

23. To the 23rd interrogatory he answers: I knew Rafael Garcia Cavazos was the niece of Maria Francisca Cavazos and husband of Doña Maria Josefa Cavazos.

24. To the 24th interrogatory he answers: Rafael Garcia Cavazos had no other labor than the one I have mentioned as possessed by Doña Maria Francisca Cavazos, to the east of Brownsville, and which he continued in possession of after her death. I do not know of my own knowledge whether he paid rent to Matamoras. Before occupying that labor he resided in Matamoras. I do not know who first opened and

established that labor, nor when it was opened. I do not know how he held it as to title.

25. To the 25th interrogatory he answers: I know John Treanor. He married a daughter of Maria Josefa Cavazos, who was the niece of Doña Maria Francisca Cavazos.

26. To the 26th interrogatory he answers: John Treanor had a labor within the ejidos of Matamoras on the Texas side. It was opened or established about the year 1837, to the northeast of the settled
216 portion of Brownsville about a half mile. I do not know of my own knowledge that he paid rent to Matamoras, but I know that all the possessors of labors had to pay rent.

27. To the 27th interrogatory he answers: When Doña Maria Francisca Cavazos was in life she never disputed the possession of any of the possessors of labors under Matamoras.

28. To the 28th interrogatory he answers: Neither Maria Josefa Cavazos, nor any person for her, disputed the possession of the holders of labors under the title of Matamoras until after 1849 or 1850, when she commenced claiming these lands as hers.

Statement of facts continued.—Answers of Encarnacion Salas to cross-interrogatories.

1. To the 1st cross-interrogatory he answers: I know the lands of the ejidos of Matamoras because I have common intelligence, and all my life I have lived on them. I have seen and examined its lines and bounds, and have gone over them since I have been able to walk or ride, and I know the directions and points where they go. I did not survey nor help to survey them. The extension or amount of land of which the ejidos were composed was notorious and public.

2. To the 2nd cross-interrogatory he answers: The jurisdiction which Matamoras exercised over the ejidos which now are on the Texas side up to 1846, was in this wise, that it gave the labors; it caused the rent to be paid to it, and no one occupied the lands without its
247 consent. I know this because I have been present. I do not know whether the said jurisdiction was exercised in accordance with law, because I am not a lawyer.

3. To the 3rd cross interrogatory he answers: I do not by what authority the city of Matamoras gave the labors and collected the rents. I only know the fact that it did it, but not if at that time if it was done in accordance with the constitution and laws of the State of Tamaulipas, because I was not then and am not now a lawyer.

4. To the 4th cross-interrogatory he answers: I know from public reputation who were the original grantees of the ejidos of Matamoras. On the other side there was Doña Rita Giron, or a descendant of his, and on the Texas side José Salvador la Garza. I do not know who their heirs were, nor where they resided when Matamoras was declared a town, for I was then very young. Doña Rita Giron lived in Matamoras then. I do not know where the heirs of José Salvador de la Garza lived when Matamoras was declared a town. I never knew nor heard it said that said heirs claimed the said lands of the ejidos after the expropriation until after Brownsville was founded.

5. To the 5th cross-interrogatory he answers: Doña Maria
248 Francisca Cavazos was a daughter-in-law of José Salvador de la Garza. Maria Josefa Cavazos and Rafael Garcia Cavazos were niece and nephew of Maria Francisca Cavazos, and were also husband and wife.

6. To the 6th cross interrogatory he answers: I am not acquainted with the constitution and laws referred to, because I am not a lawyer.

7. To the 7th cross-interrogatory he answers: I have already answered that I am no lawyer, and as the greater part of this cross-interrogatory relates to laws and the effect they might produce, I do not find myself able to answer. I was very young when Matamoras was declared a town, and I do not know what occurred then. All this belongs to the history of said city.

8. To the 8th cross interrogatory he answers: I know nothing further in relation to the question at issue.

(Signed) ENCARNACION SALAS.

Statement of facts continued.—Answers of Lino Barcenas to interrogatories propounded.

1. To the 1st interrogatory he answers: My name is Lino Barcenas, 59 years of age, by occupation a farmer, and I have lived in the vicinity of Matamoras and Brownsville since my childhood. I was born in Reynosa, Mexico, and my family came to Matamoras when I was very small.

2. To the second interrogatory he answers: I have known the corporation of Matamoras since I have known anything.

3. To the 3rd interrogatory he answers: Yes; I know the original ejidos of Matamoras; they consist of four square sitios or
249 leagues of land, and they are formed by four straight lines from the center of the principal plaza of Matamoras—one in each cardinal direction and then squared. The lower, or rather then eastern, line of said original ejidos crosses the Rio Grande below Brownsville about one league, and near the Rancho Santa Rosalia. The upper, or rather the western, line crosses the river at a little less than a league above Brownsville, between the Los Prietas and Ramireño.

4. To the 4th interrogatory he answers: The original ejidos of Matamoras extend to the Texas side of the Rio Grande.

5. To the 5th interrogatory he answers: The localities or places within the ejidos on the Texas side are Santa Rosalia, Los Tomatoes, the site of Fort Brown, Brownsville, Freeport, Mansfield—which has disappeared—and the Rancho Ramireño.

6. To the 6th interrogatory he answers: The corporation of Matamoras exercised jurisdiction over the lands in the ejidos on the Texas side for many years and up to the time of the American occupation in 1846.

7. To the seventh interrogatory he answers: The corporation exercised said jurisdiction over the said ejidos as owner of the land by granting labors to the inhabitants for cultivation and for the construction of their houses, and the inhabitants paid the said corporation for the
250 use they made of the labors a yearly rent of twelve reals. Matamoras exercised this jurisdiction without disturbance or interruption in the character I have stated since she was declared a town until the American occupation.

8. To the eighth interrogatory he answers: I can remember some of those who had labors in the ejidos on the Texas side under Matamoras. There were many of them, and among them the following: Felipe Garza, Ysidro Sanchez, José Maria Garcia, Rosa Florez, Rafael Morales, Sabas Loya, Ramon Flores, Antonio Ramirez, father; Antonio Ramirez, son; Antonio Garza, Sabas Garza, Manuel Barcenas, my father; Miguel Salinas, Manuel Vela, Agapito Vela, Francisco Fragosa, Rodrigo Hino-

josa, Onofre Rubalcaba, Leandro Martinez, Manuel Trevino Canales, Ygnacio Flores, Catarino Vela, Vincinte Salazar, Francisco Farias, Nazario Garza, Maximo Serna, Antonio Ynojosa, Nicolas Cavazos, Felipe Gloria, Felix Fuentes, Prudencio Muñoz, Jose Maria de los Santos, Francisco Herrera, Fermin Salas, Jesus Cadenas, Vicente Ramirez, Maximo del Castillo, Juan Ramirez, Macedonio Ramirez, Pedro Flores, Luz Rendon, Rafael Garcia Cabazos, Maria Francisca Cabazos, Juan Treanor, Filipe de los Santos, Bernardo Garcia, Ramon Hinojosa, Cirilo Tanguma, Manuel Sabariego, Ygnacio Delgado, Santos Ybarra, Miguel Padron, Juan Casas, Juan Añorga, Jacinto Martinez, Jose Maria
251 Trevino, Vicente Hinojosa, Jose Maria Vera, Miguel Mendoza, and Augustin Piernas.

The aforesaid labors are those that I can now remember, and they were situated with regard to Brownsville, some of them on the part now occupied by that city, and the others above and below and in all directions around said city, reaching up to the lines of the ejidos on the east and west, fronting on the Rio Grande.

9. To the ninth interrogatory he answers: Of the labors in the vicinity of Ramireño towards Brownsville I can describe the outlines of the following: The labor of Fermin Salas was bounded on the south by the Rio Grande, on the north by an alley of Ramireno, on the east by a public road, and on the west by the labor of Maximo Castillo. That of Maximo Castillo on the south by the Rio Grande, on the north by the alley of Ramireno, on the east by the labor of Fermin Salas, on the west by the labor of Juan Ramirez. That of Juan Ramirez on the south by that of Maximo Castillo, on the north by that of Manuel Barcenas, on the east by that of Macedonio Ramirez, and on the west by the Rio Grande. That of Macedonio Ramirez on the south by the alley of Ramireno, on the north by that of Manuel Barcenas, on the east by that of Pedro Flores, on the west by that of Juan Ramirez. That of
252 Manuel Barcenas on the south by that of Juan Ramirez, and on the north by that of Sabas Garza, on the east by a public road, and on the west by the Rio Grande. That of Sabas Garza on the south by that of Manuel Barcenas, on the north by an alley that leads to the Rio Grande, on the east by a public highway, and on the west by the Rio Grande.

The labor of Antonio Garza was bounded on the south by that of Sabas Garza, on the north by that of Antonio Ramirez (father), on the east by that of Sabas Loya, on the west by the Rio Grande. That of Antonio Ramirez (father), on the south by that of Antonio Garza, on the north by the upper or western line of the ejidos, on the east by the labor of Ramon Flores, and on the west by the Rio Grande. That of Sabas Loya on the south by an alley which leads to the Rio Grande, on the north by that of Ramon Flores, and on the east by a public highway, and on the west by that of Antonio Garza. That of Ramon Flores, on the south by that of Sabas Loya, on the north by that of Rafael Morales, on the east by a public highway, and on the west by that of Antonio Ramirez (father). That of Rafael Morales on the south by that of Ramon Flores, on the north by the western line of the said ejidos, on the east by a public road, on the west by that of Antonio Ramirez (father). The labor of Antonio Ramirez (son), on the south by a
253 piece of vacant land belonging to the ejidos, on the north by a lane dividing it from that of Sabas Loya, on the east by a public road, and on the west by that of Sabas Garza.

The labor of Juan Cardenas on the south by the alley of Ramireno, on the north by the labor of Ysidoro Sanchez, on the east by that of

Francisco Herrera, and on the west by that of José Maria Treviño. That of José Maria Treviño on the south by the alley of Ramireño, on the north by that of Juan Casas, on the east by that of Jesus Cardenas, on the west by that of José Maria Vera. That of José Maria Vera on the south by the alley of Ramireño, on the north by that of Vicente Ramirez, on the east by that of José Maria Treviño, on the west by the same alley of Ramireño. That of Vicente Ramirez on the south by that of José Maria Vera, on the north by the alley of Ramireño, on the east by that of Juan Casas, and on the west by the aforesaid alley of Ramireño. That of Juan Casas on the south by that of José Maria Treviño, on the north by the alley of Ramireño, on the east by that of Jesus Cardenas, on the west by that of Vincente Ramirez. The labor of Pedro Flores on the south by the alley of Ramireño, on the north by a public high-
way, on the east by that of José Maria Garcia, on the west by the
254 alley of Ramireño. That of José Maria Garcia, on the south by the alley which divides it from that of Isidero Sanchez, on the north by a public highway, on the east by a public highway, and on the west by a public highway. The labor of Isidero Sanchez on the south by that of Jesus Sanchez, on the north a lane which divided it from that of José Maria Garcia, on the east by a public highway, and on the west by the alley of Ramireño. That of Felipe Garza on all four sides by public highways.

I am enabled to give the aforesaid boundaries because they are those of labors in the vicinity of which I lived for many years. Of the other labors in the ejidos on the Texas side, I cannot now fix the boundaries. A great number of the labors I have mentioned were possessed by their holders from the time labors were first granted by the corporation of Matamoras, which occurred about the years 1827 or 1828. I cannot state how long each one of said labors was in possession of its holder, nor between what dates; but the most of them were so possessed for many years previous to the American occupation in 1846. From my childhood I have seen labors in the ejidos of Matamoras, on the Texas
side; all the labors were held under the city of Matamoras, and
255 the said city collected an annual rent for the use of them.

10. To the tenth interrogatory he answers: The labor holders made use of their labors by planting and improving them; they lived in houses built by them on said labors for that purpose, and all fenced their labors, and kept them continually under fence. They held the labors under the city of Matamoras.

11. To the eleventh interrogatory he answers: There was no exception in favor of any person regarding the obligation to pay the rent to the corporation of Matamoras for the use of the labors.

12. To the twelfth interrogatory he answers: There were agents who came to the labor-holders to collect the rent in behalf of the corporation of Matamoras, and sometimes the labor-holders themselves paid the said rent into the municipal office. There was no fixed rule about this.

13. To the thirteenth interrogatory he answers: The other lands embraced in the ejidos, which were not fenced into labors, served and were made use of by all the inhabitants in common for the herding of animals, cutting of fire-wood and brush for the use of fences, and other necessities of the people. This public use began from the time ejidos were granted to the town of Matamoras, and continues yet.

14. To the 14th interrogatory he answers: The yearly rent was twelve reals for each labor of a certain dimension which I do not at pres-

256 ent recollect. A labor of ordinary size paid twelve reals per year.

15. To the 15th interrogatory he answers: I knew the deceased Maria Francisco Cabazos, she resided in Matamoras, but I do not know in what year she died.

16. To the 16th interrogatory he answers: Doña Maria Francisco Cabazos was living when Matamoras was made a town; she resided then in Matamoras.

17. To the 17th interrogatory he answers: The said lady had a labor in the ejidos which is on the Texas side. She had the same when Matamoras was declared to be a town. Afterwards, Don Rafael Garcia Cabazos had possession of one portion, and Juan Estevan Gutierrez of the other portion of said labor. I cannot say whether Doña Maria Francisca Cabazos paid rent to the corporation of Matamoras for that labor. The rule or principal provision was general that all should pay the said rent.

18. To the 18th interrogatory he answers: I have already stated that Juan Estevan Gutierrez had possession of one part of the labor of Doña Maria Francisca Cabazos, and subsequently the widow of the said Juan Estevan had it. I do not know when the possession of Juan Estevan Gutierrez or his widow commenced, nor how long it lasted. Neither do I know whether they paid rent, but I infer so, from the general obligation I have stated. Miguel Salinas it was who came in pos-
257 session of Juan Estevan's and his the widow's labor after them.

19. To the 19th interrogatory he answers: I do not know at what time Miguel Salinas entered into the possession of the labor of Juan Estevan and his widow, nor how long he occupied the same, but I do know that he had the same when the American occupation in 1846 occurred.

20. To the 20th interrogatory he answers: The possession of the labors was always under Matamoras, but I do not know how the labor of Maria Francisca Cabazos was held by her and its various holders.

21. To the 21st interrogatory he answers: The aforesaid labor was situated a little to the east or southeast from where Brownsville is now, a part in the garrison of Fort Brown and a part within the said city. I do not remember the labors which bounded on the labor of Doña Maria Francisca Cabazos, because I lived in the upper portion of the ejidos.

22. To the 22nd interrogatory he answers: I do not know.

23. To the 23rd interrogatory he answers: I knew the deceased Don Rafael Garcia Cabazos, he married the niece of Doña Maria Cabazos, his wife was Doña Maria Josefa Cabazos.

24. To the 24th interrogatory he answers: The labor that Rafael Garcia Cabazos had was one part of the labor of Doña Maria Francisca Cabazos, as I have stated before. It was situated a little
258 to the east and southeast of Brownsville. I have already stated the labors which bounded on said labor in my answer to the 21st interrogatory. I do not know who first opened and established said labor, nor when it was done, nor do I know how the same was held with regard to title. I do not know whether he paid rent to Matamoras. Rafael Garcia Gabazos lived in Matamoras before having possession of said labor.

25. To the 25th interrogatory he answers: I have known John Treanor, he married a daughter of Doña Maria Josefa Cabazos, and the latter was niece to Doña Maria Francisca Cabazos.

26. To the 26th interrogatory he answers: John Treanor had a labor in the ejidos of Matamoras on the Texas side. He had it for many years,

from about the year 1837, but I do not remember when it was opened or established, nor by whom. It was situated to the northeast of Brownsville at a distance of between a mile and a half mile. I do not know whether he paid rent to the corporation of Matamoras for the use of his labor, but there was no exception as regards the obligation of paying said rent.

27. To the 27th interrogatory he answers: When Doña Francisca Cabazos was alive she never disputed in any manner the possession of the labors with the labor holders, neither by words or deeds, nor
259 was it ever heard said that she ever disturbed any of the labor holders in their possessions, which they always held uninterrupted and with all tranquility.

28. To the 28th interrogatory he answers: I say the same regarding Doña Maria Josefa Cabazos. Neither did she or any one for her or in her name ever dispute the possession with any of those who held labors under Matamoras, nor did she ever make of them any reclamation in or out of courts. She and her husband only made opposition to the possession of the labor holders after the American occupation, about the years 1850 or 1851.

Statement of facts continued.—Answers of Lino Barcenas to cross-interrogatories propounded.

1. To the first cross-interrogatory he answers: I know the original ejidos and the quantity of land contained in them, because I have been all over them personally, and because of the notoriety of a fact which interrested all the people who lived on these lands as I have lived on them since my earliest age. I did not make nor help to make the survey, but I obtained my knowledge of the quantity of lands contained in the said ejidos from my personal relations with the said land and from my relations with the local authorities and from public and uniform notoriety.

2. To the 2nd cross-interrogatory he answered: Granting labors and collecting the yearly rent. I know it because I have seen it. My father, Manuel Barcenas, who had a labor, also paid rent, and so did all
260 the other labor-holders. The authorities, which we all respected, exercised said jurisdiction, and therefore I say it was done rightfully.

3. To the 3rd cross-interrogatory he answers: When the corporation of Matamoras came to own her ejidos she acted by her own authority or by that given to her by the State. I doubt not that it was done in accordance with the constitution and laws of Tamaulipas, because it was done by the constituted authorities, and no one ever opposed them.

4. To the 4th cross-interrogatory he answers: I have heard it said that the original grantee of the ejidos in Texas was Don José Salvador de la Garza. I do not know who was the grantee of those in Mexico. Of his heirs or descendants I only know the Cabazos and the Tijerinas. I have never heard it said these parties ever denied the jurisdiction of Matamoras over the lands of the ejidos.

5. To the 5th cross-interrogatory he answers: I have heard it said that Maria Francisca Cabazos was daughter-in-law to Jose Salvador de la Garza; Maria Josefa Cabazos and Rafael Garcia Cabazos were married together, and were also nephew and niece (it is said) of Maria Francisca Cabazos.

6. To the sixth cross-interrogatory he answers: I have not studied law nor am I a lawyer, and I cannot answer to this question, which
261 refers to the rights of individuals. I only know that all recognized in the city of Matamoras the perfect ownership to these ejidos; such recognition was made by all the people and by the authorities on this side, which was then Tamaulipas.

7. To the 7th cross-interrogatory he answers: I know nothing of this question. I suppose that the laws of Tamaulipas are printed, and from them may be learned what is asked of me regarding the legal requirements.

8. To the 8th cross interrogatory he answers: I know nothing further regarding the matter to which this interrogatory refers.

(Signed) his LERIO + BARCENAS. mark.

Statement of facts continued.—Answers of Felipe Gutierrez to interrogatories propounded.

1. To the 1st interrogatory he answers: My name is Felipe Gutierrez. I am 66 years old. By occupation I am a farmer. I have lived in the vicinity of Matamoras and Brownsville since the year 1830.

2. To the 2d interrogatory he answers: I know the corporation of Matamoras since I came to this part of the county from Manclova, where I was born. I came here in the year 1830.

3. To the 3rd interrogatory he answers: I know well the ejidos of Matamoras as they existed originally. They were four square leagues, and their center was the principal plaza of Matamoras. One of the lines, or rather the lower one, passes below the edge of the rancho
262 Santa Rosalia, and the other, the upper one, between Ramireno and Los Prietos.

4. To the fourth interrogatory he answers: It is certain that the ejidos of Matamoras extended into the Texas side of the Rio Grande.

5 To the 5th interroga ory he answers: Santa Rosalia, Los Tomales, the quarters of Fort Brown, Brownsville, Freeport, and Ramireno.

6. To the 6th interrogatory he answers: The corporation of Matamoras exercised the jurisdiction whereof I am asked during the time mentioned.

7. To the 7th interrogatory he answers: Ever since I came to Matamoras, in 1830, and until the occupation by the American army (Matamoras), the corporation of Matamoras exercised jurisdiction over the ejidos on the Texas side, granting labors to the inhabitants that they might cultivate the land, and collecting an annual rent for the use *for the use* made of them. Indeed Matamoras was considered and looked upon by all the world as the owner of said ejidos.

8. To the 8th interrogatory he answers: Of the possession of labors within the ejidos on this side of the Rio Grande, I remember those which I am going to mention: Luis Rendon, Pedro Flores, Macedonio Ramirez, Juan Ramirez, Maximo del Castillo, Vicenti Ramirez, Jesus Cardenas,
263 Fernim Salus, Francisco Herrera, José Maria de los Santas, Prudencio Muñoz, Felix Fuenteo, Felipe Gloria, Nicolas Cabazos, Antonio Hinojosa, Maxiano Sierra, Nazario Garza, Francisco Farias, Vicente Salagar, Catarine Vela, Ygnacio Flores, Manuel Trevino Canales, Leandro Martinez, Onofre Rubaleaba, Rodrigo Hinajosa, Francisco Fragosa, Agapito Vela, Manuel Vela, Miguel Salinas, Manuel Barcenas, Sabers Garza, Antonio Garza, Antonio Ramirez, padre, Antonio Ramirez Hijo, Ramon Flores, Sabas Laya, Rafael Morales, Rosa Flores, Jose

Maria Garcia, Isedero Sanchez, Felipe Garza, Rafael Garcia Cabazos Maria Francisco Cabazos, Juan Treanor, Felipe de los Santos, Augustin Riernas, Miguel Mendoza, José Maria Vera, Vicente Hinajosa, José Maria Trevino, Jacinto Martinez, Juan Anorga, Juan Casas, Miguel Padron, Santos Ybarra, Ygnacio Delgado, Manuel Sabariego, Ramon Hinojosa, and Bernardo Garcia. There were many others, but I only remember these at present. These labors were situated with reference to Brownsville, as well around below and above it, as in the place where Brownsville now stands.

9. To the 9th interrogatory he answers: Of the labors about which I am asked, I can only mention the boundaries of the following: The labor of Fermin Salas was bounded on the south by the Rio Grande, on the north on a lane of Ramireno, on the east by a public high-
264 way, and on the west by the labor of Maximo del Castillo. That of Maximo Castillo on the south by the Rio Grande, on the north by the lane of Ramireno, on the east by the labor of Fermin Salas, and on the west by that of Juan Ramirez. That of Juan Ramirez on the south by the labor of Maximo Castello, on the north by that of Manuel Barcenas, on the east by that of Macedonio Ramirez, on the west by the Rio Grande. That of Macedonio Ramirez on the south by the lane, or rather the road to Ramireno, on the north by that of Manuel Barcenas, on the east by that of Pedro Flores, on the west by that of Juan Ramirez. That of Manuel Barcenas on the south by that of Juan Ramirez, on the north by that of Sabas Garza, on the east by a public road, and on the west by the Rio Grande. That of Sabas Garza on the south by that of Manuel Barcenas, on the north by a lane that goes to the Rio Grande, on the east by a public highway, and on the west by the Rio Grande. That of Antonio Garza on the south by that of Sabas Garza, on the north by that of Antonio Ramirez' father, on the east by that of Sabas Loya, and on the west by the Rio Grande. That of Antonio Ramirez' father on the south by that of Antonio Garza, on the north by the western boundary of the ejidos, on the east by the labor of Ramon Flores, and on the west by the Rio Grande. That
265 of Sabas Loya on the south by a lane to the Rio Grande, on the north by that of Ramon Flores, on the east by a public highway, and on the west by that of Antonio Garza. That of Ramon Flores on the south by that of Sabas Loya, on the north by that of Rafael Morales, on the east by a public highway, and on the west by that of Antonio Ramirez' father. That of Rafael Morales on the south by that of Ramon Flores, on the north by the western boundary of the ejidos, on the east by a public highway, and on the west by that of Antonio Ramirez, father.

The labor of Antonio Ramirez, son, on the south by a piece vacant land of the ejidos, on the north by a lane which divided it from that of Sabas Loya, on the east by a public highway, and on the west by that of Sabas Garza. The labor of Jesus Cardenas on the south by the lane of Ramireno, on the north by the labor of Ysidero Sanchez, on the east by that of Francisca Herrera, and on the west by that of José Maria Trevino. That of José Maria Trevino on the south by the lane of Ramireno, on the north by that of Juan Casas, on the east by that of Jesus Cardenas, and on the west by that of José Maria Vera. That of
266 José Maria Vera on the south by a lane to Ramireno, on the north by that of Vicente Ramirez, on the east by that of José Maria Trevino, and on the west by the same lane of Ramireno. That of Vicente Ramirez on the south by that of José Maria Vera, on the north by a lane to Ramireno, on the east by that of Juan Casas, and

on the west by the same alley to Ramireno. That of Juan Casás on the south by that of José Maria Trevino, on the north by the lane of Ramireno, on the east by that of Jesus Cardenas, and on the west by that of Vicente Ramirez.

The labor of Pedro Flores on the south by the lane of Ramireno, on the north by a public road, on the east by that of José Maria Garcia, and on the west by the lane to Ramireno. That of José Maria Garcia on the south by a lane which divided it from that of Ysidero Sanchez, on the north, east, and west by public highways. That of Ysidero Sanchez on the south by the labor of Jesus Cardenas, on the north by a lane which divided it from that of José Maria Garcia, on the east by a public highway, and on the west by the lane of Ramireno. That of Felipe Garza on the south, north, east, and west by public highways. I don't remember any more. When I came to Matamoras, in 1830, the ejidos on the Texas side were already occupied by a great num-
267 ber of labors, among them many of those which I have mentioned. I cannot particularize as to when each labor was possessed. All the possessors recognized Matamoras, or rather the corporation, as the owner of the lands on which their labors were, and they paid an annual rent for their use.

10. To the 10th interrogatory he answers: The possessors planted corn, beans, and cotton, and other seed; they always kept their labors under fence; they built houses on them to live in; they used them as farm lands. The possessors held the labors as tenants of the corporation of Matamoras.

11. To the 11th interrogatory he answers: There was no exception in favor of any one.

12. To the 12th interrogatory he answers: It was paid to the agents appointed for the purpose of collecting, by the corporation of Metamoras, and the agents gave the corresponding receipts.

13. To the 13th interrogatory he answers: The inhabitants used in common and free of charge the other lands of the ejidos which were not taken up by labors, nor fenced in for the grazing of their animals, the cutting of firewood, grass, and brush. Since 1830 up to the present I have seen this common use continued.

14. To the 14th interrogatory he answers: Twelve reals a year for each labor.

268 15. To the 15th interrogatory he answers: Yes; I know her; she lived in Matamoras. I first knew her about 3 years before her death. She was an old lady then. She lived in the small plaza de la Capella, in Matamoras. I don't remember in what year she died, but it was about 3 years after I first knew her.

16. To the 16th interrogatory he answers: I judge so, from her advanced age at the time I knew her. I don't know where she lived then.

17. To the 17th interrogatory he answers: She had a labor in the ejidos, on this side of the Rio Grande, when I first came here. I don't know whether she paid rent for the use of it, nor how long she had had it then. Some time afterwards I saw Rafael Garcia in possession of a part of this labor, and the other part in possession of the widow of Juan Estevan Gutierrez.

18. To the 18th interrogatory he answers: I don't know for how long the widow of the said Juan Estevan Gutierrez occupied that labor. Miguel Salinas was the subsequent possessor. I don't know whether Juan Estevan or his widow paid rent to Matamoras, but it can't be doubted, for there was no exception, regarding this, in favor of no one.

19. To the 19th interrogatory he answers: I only know since I saw

as on the other side of the Rio Grande, long before and up to the time of the occupation by the American troops, which occurred in 1846.

7. To the 7th interrogatory he answers: The corporation of Matamoras, in the exercise of her jurisdiction, granted labors on the *the* side of Texas, as well as on the other side, to the inhabitants for their use
274 for the consideration of an annual rent of twelve reals, which the holders paid to the city of Matamoras. The holders held and cultivated the labors and the corporation sustained them in that possession as owner of the lands. Since I can remember anything, I have seen the said corporation exercise the said jurisdiction continually, and up to the time of the American occupation in 1846, and in the character of owner of the lands.

8. To the 8th interrogatory he answers: There were a great many labors. I remember some of the holders and the others I don't. I remember the following: Pedro Flores, Macedonio Ramirez, Juan Ramirez, Maximo Castillo, Vicente Ramirez, Jesus Cardenas, Fermin Salas, Francisco Herrera, José Maria de los Santos, Prudencio Munoz, Felix Fuentes, Felipe Gloria, Nicolas Cabazos, Antonio Hinojosa, Maximo Sierra, Nasario Garza, Francisco Farias, Vicente Salazar, Catarino Vela, Ygnacio Flores, Manuel Trevino Canales, Manuel Martinez, Onofre Ribalcaba, Rodrigo Hinojosa, Francisco Fragosa, Agapito Vela, Manuel Vela, Miguel Salinas, Manuel Barcenas, Sabas Garza, Antonio Garza, Antonio Ramirez, father, Antonio Ramirez, son, Ramon Flores, Sabas Loya, Rafael Morales, Rosa Flores, José Maria Garcia, Ysidero Sanchez, Felipe Garza, Luz Reudon, Rafael Garcia Cabazos, or rather Dona Maria Francisca Cabazos, John Treanor, Felipe de los Santos, Bernardo Garcia,
275 Ramon Hinojosa, Civilo Tanguma, Manuel Sabariego, Ygnacio Delgado, Santos Ybarra, Augustin Piernas, Miguel Mendoza, José Maria Vira, Vicente Hinojosa, José Maria Trevino, Jacinto Martinez, Juan Añorga, Juan Casas, & Miguel Padron. Regarding the present city of Brownsville, said labors were situated, some on the very place on which the said city now stands, and the others in all directions around her, from Santa Rosalia on one side, to the rancho Ramireno on the other.

9. To the 9th interrogatory he answers: I cannot give the boundaries of all the labors whose holders I have mentioned, but I can remember some of them. The labor of Fernim Sadas was bounded on the south by the Rio Grande; on the north by a lane of Ramireno; on the east by a highway, and on the west by the labor of Maximo del Castillo. The labor of Maximo del Castillo, on the south by the Rio Grande; on the north by the lane of Ramireno; on the east by the labor of Fernim Salas, and on the west by the labor of Juan Ramirez. The labor of Juan Ramirez, on the south by that of Maximo del Castillo; on the north by that of Manuel Barcenas; on the east by that of Macedonio Ramirez, and on the west by the Rio Grande. That of Macedonio Ramirez, on the south by the lane to Ramireno; on the north by that of Manuel Barcenas; on the east by that of Pedro Flores, and on the west by
276 that of Juan Ramirez. That of Manuel Barcenas, on the south by that of Juan Ramirez; on the north by that of Sabas Garza; on the east by a public highway, and on the west by the Rio Grande. That of Sabas Garza, on the south by that of Manuel Barcenas; on the north by a lane which leads to the Rio Grande; on the east by a public highway, and on the west by the Rio Grande. That of Antonio Garza was bounded on the south by that of Sabas Garza; on the north by that of Antonio Ramirez, father; on the east by Sabas Loya, and on the west by the Rio Grande. That of Antonio Ramirez, father, on the south

by that of Antonio Garza; on the north by the western line of the ejidos; on the east by the labor of Ramon Flores, and on the west by the Rio Grande.

The labor of Sabas Loya, on the south by the lane that goes to the Rio Grande; on the north by that of Ramon Flores; on the east by a public highway, and on the west by that of Antonio Garza. That of Ramon Flores, on the south by that Sabas Garza; on the north by that of Rafael Morales; on the east by a public highway, and on the west by that of Antonio Ramirez, father. That of Rafael Morales, on the south by that of Ramon Flores; on the north by the western line of the ejidos; on the east by a public highway, and on the west by that of An-

277 tonio Ramirez, father. That of Antonio Ramirez, son, on the south by a piece of vacant land of the ejidos; on the north by a lane which separated it from that of Sabas Loya; on the east by a public highway, and on the west by that of Sabas Garza. That of Jesus Cardenas, on the south by the lane of Ramireno; on the north by that of Ysidero Sanchez; on the east by that of Francisco Herrera, and on the west by that of José Maria Trevino. That of José Maria Trevino, on the south by the lane of Ramireno; on the north by that of Juan Casas; on the east by that of Jesus Cardenas, and on the west by that of José Maria Vera. That of José Maria Vera, on the south by the lane of Ramireno, on the north by that of Vicente Ramirez; on the east by that of José Maria Trevino, and on the west by the lane of Ramireno. That of Vicente Ramirez, on the south by that of José Maria Vera; on the north by the lane of Ramireno; on the east by that of Juan Casas, and on the west by the lane of Ramireno. That of Juan Casas, on the south by that of José Maria Trevino; on the north by the lane of Ramireno; on the east by that of Jesus Cardenas, and on the west by that of Vicente Ramirez. That of Pedro Flores, on the south by the lane of Ramireno; on the north by a public highway; on the east by that of José Maria Garcia, and on the west by the lane of Ramireno.

278 That of José Maria Garcia, on the south by a lane which divided it from that of Ysedro Sanchez; on the north by a public highway, and on the west by a public highway. That of Ysidero Sanchez, on the south by that of Jesus Cardenas; on the north by a lane which separated it from that of José Maria Garcia; on the east by a public highway, and on the west by the (collejou) lane of Ramireno. The labor of Filipe Garza was bounded on the south, north, east, & west by public highways.

I cannot remember any more. These are the labors which are situated from Brownsville upwards, or rather to the west, until you get to the western boundary of the ancient ejidos of Matamoras. I have known many of these labors from my earliest years, in the possession of their holders, and they appeared to have been so much longer or before, judging by the appearance of the houses, fences, and other circumstances. They were being opened from my infancy upwards, and up to a little before the occupation by the American army, in 1846. All the labors were held under the city of Matamoras, to whom the holders paid a rent annually for the use. I do not exactly know the dates in which each one obtained his labor, but since the establishment of the ejidos labors existed, and among them are those I have mentioned.

279 10. To the 10th interrogatory he answers: The possessor' of the labors planted them, built their houses on them, and kept them always under fence, for indeed this wasone of the conditions of the possession, and those who had servants or families lived with them on the said labors.

11. To the 11th interrogatory he answers: There was no exception made in favor of any one regarding the payment of the annual rent for the use of the labors.

12. To the 12th interrogatory he answers. At times the labor-holders paid the rent to a person appointed for the purpose of collecting the same, and at times they paid it direct into the office of the municipality.

13. To the 13th interrogatory he answers: The inhabitants made common use of the lands which were not taken up by labors for the benefit of their animals, for fire-wood and grazing, as well as for cutting brush for fences. This common use began from the time ejidos were given to Matamoras, which was when I was yet a child, and has continued since then.

14. To the 14th interrogatory he answers: The corporation collected an annual rent of twelve reals for each labor.

15. To the 15th interrogatory he answers: I did not know Doña Maria Francisca Cabazos personally. She was alive when I was a child. I don't know where she lived nor when she died.

280 16. To the 16th interrogatory he answers: As I did not know her myself, I cannot answer. I heard she was an aged lady when I was a child. I don't know where she lived at the time about which I am interrogated.

17. To the 17th interrogatory he answers: It is certain that Doña Maria Francisca Cabazos had a labor in the ejidos of Matamoras, on the Texas side. I don't know whether she had it at the time Matamoras was made a town, for I was very small at that time. Don Rafael Garcia Cabazos had this labor afterwards, or rather he had a part of it, and the part which *which* was not held by Rafael Garcia was held afterwards by Juan Estevan Gutierrez. I do not know whether Doña Maria Francisca Cabazos paid or not rent to the corporation of Matamoras for her labor. I only know that there was a general rule that all should pay it.

18. To the 18th interrogatory he answers: Juan Estevan Gutierrez, and afterwards his widow, had possession of a part of the labor of Doña Maria Francisca Cabazos. I don't know how long they had such possession. Subsequently Miguel Salinas had possession of this labor. I cannot say whether Juan Estevan Gutierrez or his widow paid rent for this labor.

19. To the 19th interrogatory he answers: Miguel Salinas got
281 to own this labor afterwards, and he held the same up to the time of the American occupation. I don't know whether he paid rent on this labor, nor how long he held it.

20. To the 20th interrogatory he answers: The labor-holders got their possession of the labors by a denounciation made to the corporation of Matamoras, under which authority they entered upon and held possession, but I do not know how this particular labor was held by its various holders.

21. To the 21st interrogatory he answers: I cannot give the boundaries of the labor of Doña Maria Francisca Cabazos, but it was partly situated on the present site of Brownsville, and partly on that which is now the garrison of Fort Brown, reaching towards the lake which is there.

22. To the 22d interrogatory he answers: I do not know the import of this question.

23. To the 23d interrogatory he answers: I knew Don Rafael Garcia Cabazos by sight. I can't exactly say what relationship he bore to

Maria Francisca Cabazos. I heard that he was married to Maria Josefa Cabazos.

24. To the 24th interrogatory he answers: As I stated before, Rafael Garcia Cabazos had a part of the labor of Doña Maria Francisca Cabazos within the ejidos on the Texas side. Said labor was known as "The Ranchito of Doña Francisca." It was situated almost to the east
282 of Brownsville. I cannot say what labors joined this labor, nor as to who opened or established it first, nor when it was done. I don't know under what title she held it, or whether she paid rent, or where she lived before occupying this labor.

25. To the 25th interrogatory he answers: I knew John Treanor. I don't know what affinity or relationship he had with Maria Francisca Cabazos, or what affinity or relationship he may bear towards Maria Josefa Cabazos.

26. To the 26th interrogatory he answers: I don't know the import of this question.

27. To the 27th interrogatory he answers: The possession of the labors was never disputed by anybody, neither was the right of Matamoras to grant them disputed.

28. To the 28th interrogatory he answers: I have already said that the possession of the farmers or labor-holders under Matamoras was never disputed by any person, indeed; they always held them without disturbance or opposition of any kind.

Statement of facts continued.—Answers of Leonardo Garza to cross-interrogatories propounded.

1. To the 1st cross-interrogatory he answers: I know the original ejidos and the quantity of land contained in them, because I have been born on them, lived on them, and travelled all over them for many years. I neither made nor assisted in making the original survey. What
283 I have stated I know from personal experience, and because it is universally known among the labor-holders who have lived and still live in the ejidos.

2. To the 2nd interrogatory he answers: I have already stated, in answer to the 7th direct interrogatory, how Matamoras exercised her jurisdiction over the ejidos. This I know, because I have seen it. I suppose that she exercised it in accordance with the laws. Indeed, no one has ever doubted it.

3. To the 3d cross-interrogatory he answers: The corporation used her authority as owner of the ejidos in the exercise of said jurisdiction. And inasmuch as it was done by the city authorities, it must have been in conformity with the constitution and laws of the State of Tamaulipas.

4. To the fourth cross-interrogatory he answers: I heard it said that the original grantee on this side was José Salvador de la Garza. I don't know who it was on the other side of the river. I did not know the heirs of that gentleman. After the expropriation, and after Matamoras was declared a town, no one claimed the lands of the ejidos against said city.

5th. To the 5th cross-interrogatory he answers: I can't answer with exactness. I have heard that Rafael Garcia Cabazos was married
284 to Doña Maria Josefa Cabazos, and that the latter was niece to Doña Maria Francisca Cabazos. I don't know what relationship existed between the latter and Don José Salvador de la Garza.

6. To the sixth cross-interrogatory he answers: I know nothing of what is asked of me in this interrogatory.

7. To the 7th interrogatory he answers: Neither do I know anything of this question.

8. To the 8th cross-interrogatory he answers: And I don't know anything more regarding the questions pending in this suit.

(Signed) his LEONARDO + GARZA. m'k.

And upon the trial of the present case it was admitted in writing as true by the parties, as follows:

"That the grant from the crown of Spain to Don José Salvador de la Garza in 1781, known as the Agostadero del Espiritu Santo, was of lands on the left bank of the Rio Grande, including all the lands in question in these actions; that the original grantee Garza died about 1790, leaving these lands to his wife Doña Gertrudis; she died about 1791, leaving Don Blas de la Garza, her son, and Don Salvador's son, also two other children, being Doña Xaviera, wife of Don José Goseascochea and Doña Margarita, wife of Don Pedro Lopez Priéto. By the last will of said Gertrudis, the middle third part of the Espiritu Santo
285 lands, including the lands in this action, came into the possession of the said Blas, who died about 1802, leaving his widow, Doña Maria Francisca Cavazos, as devisee under his will, and she died in 1835, being seized (for the purpose of this action) of said lands up to the commencement of the ejidos proceedings in 1826."

Statement of facts continued.—The English translation of the Espiritu Santo grant from the crown of Spain to Don José Salvador de la Garza in 1781. (*D.* 1.)

And the defendants to maintain the issues in their behalf introduced and read in evidence, duly proven, the following documents:

Translation of a copy of the original testimonio of title of D. José Salvador de la Garza to the "Agostadero del Espiritu Santo."

On the outside cover, attached by the notary, D. Cipriano Guerrero, at Victoria, on taking the deposition of D. Juan Nepomuceno Molano.

REPUBLIC OF MEXICO,
STATE OF TAMAULIPAS,
City of Victoria, , 1849.

Court of the first instance of the department of the documents marked L. M. which the witness D. Juan Nepomuceno Molano examined, and which are mentioned in the deposition which he has given in the civil suits which D. Rafael Garcia Cavazas and others are prosecuting in the district court of the United States of America for the district of Texas, against D. Simon Mussina, D. Cartas Stillman, and others as to title to lands.

286 On the outside cover of the copy marked L. Title of the 59 sitios and 11 caballerias in the Portrero del Espiritu Santo.

Petition.

To the first constitutional alcalde:

I, Juan José Tijerina, of this city, appear before you in due form of law, and say, that there being various owners of the tract of land to which the annexed title refers, and fearing that it may come to be difficult

to read it, as well on account of its age as by reason of the use of it by the parties interested, I ask and pray your honor to be pleased to order that two authorized copies in due form be given to me, which may have the same authority as the original, which I likewise ask may be returned to me after being rubricated by your honor. I ask this as a matter of justice, with the declaration and oath prescribed by law.

Matamamoras, March seventh, one thousand eight hundred and thirty-seven.

JUAN JOSE TIJERINA.

City of Matamoras, March eighth, one thousand eight hundred and thirty-seven.

This petition with the accompanying documents having been admitted, let the copys which the party asks be taken, and when this is done let it be returned to him as he prays.

I, the citizen Juan Nepomuceno Molano, first constitutional alcalde, thus provide, and have ordered and signed with my assisting witnesses with whom I act.

I certify.

JUAN NEPOMUCENO MOLANO.

287 Assisting witness: FRANCISCO MAYORGA.

Assisting witness:
MARCOS GALINDO.

On the same date D. Juan José Tijerina being present in his proper person, as I certify, I notified and appr'zed him of the foregoing order, and having understood it he said: That he hears and signs with me and my assisting witnesses.

I certify.

MOLANO,
JUAN JOSÉ TIJÉRINA.

Assisting witness:
FRANCISCO MAYORGA.
Assisting witness:
MARCOS GALINDO.

Old title 2: Mexico, and September the twenty-sixth, one thousand seven hundred and eighty-one.

2nd title-page: Title of sale, adjudication, and grant of fifty-nine sitios of Ganado and eleven caballerias of land, made by the special judge of lands of this kingdom, and confirmed by the royal audience, in favor of D. José Salvador de la Garza, resident citizen of the town of Camargo, within the limits of the colony of Santander.

Don Francisco Xavier de Gamboa, of the council of His Majesty, his oidor in this royal audience of New Spain, and special judge of sales and purchases of lands and waters in the district of the royal audience, etc.:

Whereas proceedings were had before me, in this my special tribunal, upon the application of D. José Narciso Cavazos, resident and
288 original settler (poblador) of our Lady of Guadáloupe de Reynosa, on the Gulf of Mexico, who asked to be permitted to purchase a potrero named Santa Rita, and after the usual order had been given to him that the proceedings prescribed in it for the object of his claim might be taken, D. José Salvador de la Garza, upon this, opposed the said claim, declaring that the said lands were contained within the potrero

named Espiritu Santo, which he had denounced in the year seventy-two, before the lieutenant-general of the colony, who ordered him to apply to this tribunal, and he having done so by means of powers of attorney, which he gave, and full means for the prosecution of the business, he failed in obtaining the grant through the negligence of his attorneys.

In consideration whereof, and of the proceedings had on the application of the said Cabazas, and what has been alleged on either side, by an order of the twenty-sixth of November, in the past year, seventeen hundred and seventy seven, I declare that the purchase of the place of Santa Rita, claimed by Cabazas, could not be admitted; and I ordered that a commission (despacho) be delivered to D. José Salvador de la Garza, in conformity with the denunciation which he had heretofore made before the lieutenant-general of the colony, and repeated in this tribunal, in order that the nearest justice (teniente) might execute the proceedings prescribed in the order.

289 In obedience to which the commandante of the town of Camargo proceeded to receive the following testimony (informacion):

Testimony.

In the town of Santa Anna de Camargo, on the aforesaid fifteenth day of the month of June, one thousand seven hundred and seventy-nine, before me, Do. Juan Antonio de Echave, holding the post of chief justice of the said town (teniento de justicia mayer de decha villa), and commissioned as judge in these proceedings, and before my assisting witnesses, D. José Salvador de la Garza presented as his first witness D. Salvador Vila, a resident citizen of the said town, and I administered to him, in his proper person, which I certify I know, the oath, which he took in full form, by God our Lord and the sign of the Holy Cross, under which he declared he would speak the truth as to what he might know and should be asked, and being interrogated as I have directed, he said that the potrero, which he knows as that of the "Espiritu Santo," has as its boundaries and natural outlines (terminas y linderos) the aroyo Colorado, the laguna (lagunas) of the sea, the Rio Grande, and on the side of the entrance a thick wood; that he knows that the first who settled the said potrero was D. José Salvador de la Garza, who has had and still has possession of it, with various others, whom sometime afterwards he established there, under his protection or control (los puio ú su arrimo), it being about eight years since he settled it.

290 That he knows that these lands are vacant and a part of the public domain (valdias y realengas), because he has known no owner of them; that this is the truth, upon the oath which he has taken, and this he confirmed and ratified.

He said that he was seventy-five years of age, that the general prohibition of the law did not apply to him, and as he did not know how to write, I, the aforesaid judge, did so for him, before me and my assisting witnesses, with whom I act as an examining judge (juez receptor), all of which I certify.

JUAN ANTONIO DE ECHAVE.

Assisting witness:
JOSÉ LORENZO TREVIÑO.
Assisting witness:
TOMAS FLORES.

2d witness.

And im'ediately thereafter, before me, the aforesaid judge, and my assisting witnesses in the present investigation, D. José Salvador de la Garza offered as his second witness Juan Damacio Peres, a Spaniard, and resident citizen of the said town, and I administered to him, in his proper person, which I certify I know, the oath which he took, by God our Lord and the sign of the cross, upon the faith whereof he declared he would state the truth in all that he might know and should be asked, and being interrogated, as has been ordered, he said, the party being present to see him take the oath as in the preceeding examination:

That the potrero which they call that of the Espiritu Santo has upon one side, and to form its figure (per un lado tum y forma), the Rio
291 Grande, Lagunas of the sea, Arroyo Colorado, and a thick wood (briñalespuo) or thicket, on the side of the entrance of the said potrero, in the center of which it has some ponds when it rains, which slowly dry up; that the first who entered by breaking through the thicket was D. José Salvador de la Garza, who possessed it and still possesses it with another, whom he put there under his protection (a su arrimo metio) long after; that it must be something like eight or nine years since the said D. José Salvador has settled it; that he knows the said lands to be vacant, uncultivated lands, belonging to the public domain of the king, and that he has positively not known or heard mention of any other person as having settled (poblado) the said lands; that this is the truth upon the oath that he has taken, and confirming and ratifying it.

He said that he was fifty years of age, and that the general prohibitions of the law do not apply to him, and he also does not know how to write; I, the said judge, have done so before me and my assisting witnesses, acting by way of an examining board (per receptoria), as before stated; which I certify.

JUAN ANTONIO DE ECHAVE.

Assisting witness:
JOSÉ LORENZO TRIVIÑO.
Assisting witness:
TOMAS FLORES.

3d witness.

In the town of our Lady Santa Anna de Camargo, on the sixteenth day of the said month and year, before me, the above-mentioned judge and assisting witnesses, D. José Salvador de la Garza presented
292 as his third witness D. Juan Bautista Garcia, a resident citizen of the said town, and I administered to him, in his proper person, which I certify I know, the party being present, the oath which he took according to law, by God our Lord and the sign of the holy cross, upon which he declared he would state the truth as to what he might know and should be asked, and being interrogated as is required, he said:

That he has known the potrero which they now call that of the Espiritu Santo, about twenty-six years, in e'peditions undertaken against the savages, as one of the first settlers of this town, and that he has always known it as uncultivated vacant land, belonging to the public domain of the crown, and that the arroyo now known as the Colorado forms it upon one side, the lagunas immediately communicating with the sea upon another, and on the third and southern side the Rio Grande, closing on the west with a thicket. That he knows as public

and notorious that D. José Salvador de la Garza opened and broke through this thicket making an entrance into it, when he stocked it, which must be eight or nine years ago, without any other person having done so before, and that he knows and is sure that he has maintained under his care and protection other persons whom he placed in it after he had entered and (stocked) settled the said land, in which he has
seen some fences and bars (trancas) which serve to close the en-
293 trance, all made by the said Don José Salvador de la Garza, who
has enjoyed and kept in it his stock up to the present time, and that there are no permanent watering places except the Rio Grande; that this is the truth upon the oath that he has taken, which he confirmed and ratified, and said that he was seventy years of age, and that the general prohibitions of the law did not apply to him, and that he does not know how to sign; I have signed with my assisting witnesses, with whom I act, as has been said, which I certify.

JUAN ANTONIO DE ECHAVE.

Assisting witness:
JOSÉ LORENZO TREVIÑO.
Assisting witness:
TOMAS FLORES.

4 *witness.*

In the aforementioned town, and on the aforementioned day, month and year, before me, and in this tribunal, and before the assisting witnesses, the party presented as his fourth witness for the present examination D. Lorenzo Serna, a resident citizen of this town, and I administered to him in his proper person, which I certify I know, the oath which he took in all form of law, by God our Lord and the sign of the cross, upon which I declared he would speak the truth as to all which he might know and should be asked, and after the party who was present to see him take the oath had retired, he said:

That he is one of the first settlers of this town, and has known it for
the period of thirty years, but on account of his having been a
294 soldier, and for this reason having been assigned to various de-
tachments from this province, he was never in those times with his companions at the potrero which is now called that of the Espiritu Santo, but had on several occasions gone there himself, and knew it from having gone round the outside, where only Pagan Indians were living, until D. José Salvador de la Garza, in the year seventy-one, invited him to accompany him and examine the said potrero, to see whether it afforded any advantages for the protection of the stock ( ) of the said D. Salvador, and accompanying him, they went together to examine it, and arriving at a thicket that was there, through which alone they perceived they could make their entrance easy, they did so by means of hatchets and knives, notwithstanding the danger with which they were threatened from the Indians, and having entered, they saw the latter retiring, upon which they determined to go through the whole potrero, in which they spent six days; that immediately after, the said D. José Salvador put in it his stock (bueres), improving it (poblandale) with buildings (hacales); that he made fences and cattle pens (corrales), and that the place of his entrance may be recognized by the bars (brancas) in it; by which he knows by actual observation that the said potrero was not settled before by any other person, and that the said thicket Arroyo Colorado, Lagunas of the sea, and Rio Grande form it, that it an uncultivated tract of land

295 full in all parts of small streams and ponds, which the freshets and rise of the Rio Grande, Arroyo Colorado and Lagunas of the sea, which inundate the said potrero, have made, the men and animals then preserving themselves upon some elevations that it had, all which he has seen in passing over it afterwards on repeated occasions.

That he knows that D. Salvador de la Garza aforesaid has conciliated and obtained the good side of those Indians by giving them beeves to eat, and clothing to wear, and conducting himself with them with such courtesy (urbanidad) that he has brought some of them, both men and women, into the bosom of our holy religion, and caused them to be married by our holy mother church, so that he is well known to keep some of them in his own house; and he also knows that within the four years that the said potrero has been settled, he has placed in it under his protection some residents as well of this town as of that of Reynosa, and various others from beyond the frontier who are now living in their respective settlements, by which he knows, and it is true that the said potrero and the lands are vacant, and belong to the public domain of the crown; all which he declares by the questions which are put to him, and has confirmed and ratified it to be true upon the oath which he has taken.

He said he was sixty years of age, or a little more or less, and
296 did not know how to sign, and that the general prohibitions of the law did not apply to him. I, the said justice (terniente) and commissioned judge (juez comisionado), have signed before me and my assisting witnesses with whom I act, as has been said, all of which I certify.

JUAN ANTONIO DE ECHAVE.

Assisting witness:
JOSÉ ANTONIO TREVIÑO.
Assisting witness:
TOMAS FLORES.

5 *Witness.*

In the said town, on the same day, month and year, before me the aforesaid judge, commissioned for these proceedings, and my assisting witnesses, D. José Salvador de la Garza, presented in this tribunal as the fifth and last witness in this investigation, D. José Xavier Salinas, a resident citizen of this town, and I administered to him in his proper person, which I certify I know the party, being present, the oath, which he took according to law, by God our Lord, and the sign of the Holy Cross, upon which he declare' he would state the truth as to all which he might know and should be asked, and being interrogated as is ordered, he said:

That he is one of the first who settled and built this town, in doing which he passed on many occasions along the outside of the said potrero, which is now called that of the Espiritu Santo, and that although he was upon some of these occasions accompanied by others, he never determined, on account of the danger from the Indians, to enter and examine the said land, but that it was known that a
297 creek (arroyo) known as the Colorado Lagunes, opposite the sea, the Rio Grande and a dense thicket, made and formed the said potrero, in which only Pagan Indians dwelt, and that it remained without being settled by any other person until in the year seventy-two, D. José Salvador de la Garza entered to settle it with his stock, and by building dwelling houses, cattle pens, and fences that he made, where

he has remained without ever having been dispossessed of it, and still remains up to the present time; that he knows that something like four years afterwards, he established (agrego) as well in the said potrero as in its immediate neighborhood, several other residents of the towns of Reynosa and Camargo; that it is a country, as is publicly known as to most or the whole of the potrero, which is covered with water by the freshets, which often happen in the said Rio Grande, Arroyo Colorado, and Lagunes, as is confirmed by its being notorious that the said Don José Salvador de la Garza was once surrounded by water (islado) and was not able to escape for some days, and this danger threatened him, in such freshets, with destruction to himself and also the loss of his property (bienes); that he has already known and considers the said potrero as vacant and belonging to the public domain of the crown; that this is the truth upon the oath that he has taken, which he confirmed and ratified.

He said that he was seventy-four years of age, and that the
298 general prohibitions of the law do not apply to him, and this he has signed before me and assisting witnesses, acting as an examining court (per receptoria) as above mentioned; all of which I certify.

JUAN ANTONIO DE ECHAVO.
FRANCISCO XAVIER SALINAS.

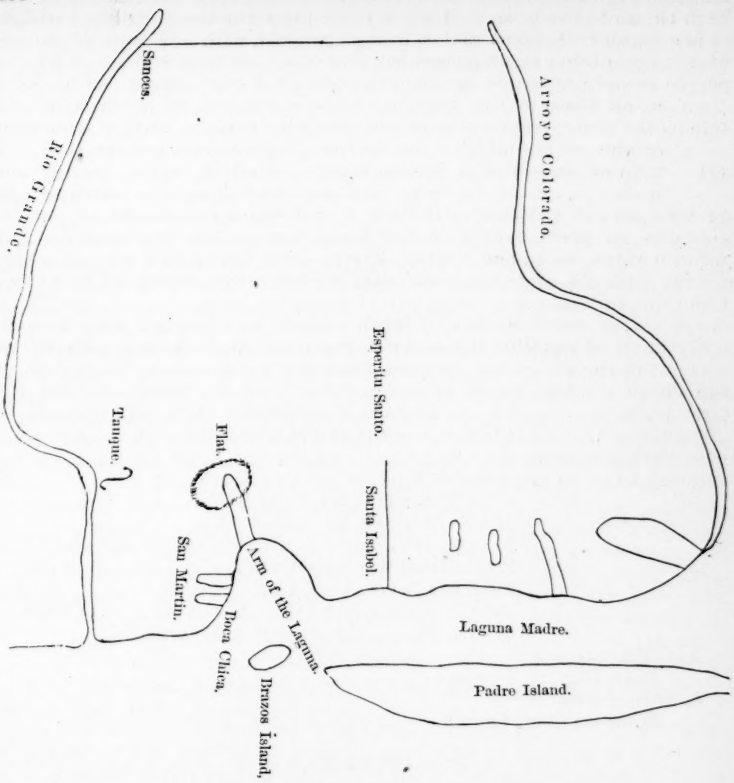
Assisting witness:
JOSÉ ANTONIO TREVIÑO.
Assisting witness:
TOMAS FLORES.

And this examination, which was taken officially, being completed, they proceeded to the actual inspection (vesta de ojos) in the following form:

Actual inspection.

In the said estate (Estancia) of the Espiritu Santo, on the twenty-sixth day of the said month and year, the said judge, accompanied by my witnesses and all those above named, who appeared in consequence of the citation made to them, taking as a guide D. Lorenzo Serna on account of the complete acquaintance that he has and enjoys (que tien y le asiste) with the said potrero, in respect to the recesses, bends and elbows (renconados, bolsas y recodos) that, as we are informed, the Rio Grande del Norte, the Lagunas of the sea, and the Arroyo Colorado, which form it, make, the expert as surveyor going likewise with us, went into the field to begin, as I did begin, the actual inspection (vesta de ojos) of the aforesaid land, and the places which surround it, water holes, and the nature of the ground (terreno), and for proof thereof I have made this official statement (lo puse per diligencia), which I have signed before myself and my assisting witnesses, with whom

299



300 I act, as examining judge (jues rec'ptor), all of which I certify.

JUAN ANTONIO ECHAVO.

Assisting witness:
JOSÉ RAFAEL LOPEZ.
Assisting witness:
JOSÉ BENETA LOPEZ.

Continued.

In the aforesaid estate, on the thirteenth day of the said month and year, I, the aforesaid judge, having terminated the actual inspection of these lands of Espiritu Santo, which was done in company with the appointed surveyor, D. Manuel de Sierratta, and other persons already mentioned, I have noticed the courses of its lines, the centre, and the nature of the ground, which is uncultivated (eriaso) on account of the many brakes and (derrames) which it contains, as well as the many expended and large ponds, which surround, and prove that the most or the whole of the potrero is inundated by them in the rises of the said Rio Grande and Arroyo Colorado, especially since from these

last issue the said ponds and lakes, the latter being fed equally by the high tides of the sea, so that when they unite the danger before spoken of is apparent, (I mean) that of being drowned, with no chance of escape, except upon some small eminences that the said potrero has, or by the people escaping (going) in boats to dry land (terre firma), at a great distance, as the water extends on these occasions as much upon one side as the other, from the river and from the arroyo; so that the most
301 of the ground of this potrero is only planted (covered) with a kind of grass called sacaquite, not at all fit to be eaten by any animal, as is known by experience, it being an herb which usually grows upon salt marshes, near the coasts of the sea, and the said potrero contains no permanent watering place, except the Rio Grande, and, when it rains, some pools which dry up in a short time, this also happening with the said ponds (esteros), and then the waters of the Arroyo Colorado, on account of their brackish and bitter nature, are like those of the sea, on which account it is only useful as regards horses and all other kinds of stock by the security and protection which is afforded on account of the said potrero not having but one entrance and exit through the dense thicket which runs across it from the arroyo to the Rio Grande, all of which I set down in this official statement (pengo per dilegencia), signing it before me and the rest of those cited and present, who having learned the same facts, and the surveyor, acting as an examining court as has been said, all of which I certify.

JUAN ANTONIO ECHAVO,
MANUEL DE SURRATTA,
JUAN JOSÉ DE LA GARZA FALCON,
BARTOLOMÉ TREVIÑO,
PEDRO VILLAREAL,
JOSÉ ANTONIO DE LA GARZA FALCON,
JOSÉ SALVADOR DE LA GARZA.

Assisting witness:
JOSÉ BENITO LOPEZ.
Assisting witness:
JOSÉ RAFAEL LOPEZ.

Continued.

In the said estate named the Espiritu Santo, on the first day of
302 the month of July in the aforesaid year, I, the aforementioned judge, in consideration of the completion of the actual inspection (vista de ojos) of the said potrero, and inasmuch as no opposing circumstance has been raised to impede or prevent the survey and examination (reconocimento) of its lands as is ordered to me, in consequence thereof it is my duty to order, and I do order, to pass to its execution, and it must begin from a watering place (abrevadero) that there is on the Rio Grande, where it forms a corner with the fence which runs to this place, from the north to the south, which is the line of the thicket, which proceeds (comes) from the Arroyo Colorado in the same direction, and for its proper effect, I set it down in this official statement before me and the witnesses with whom I act, as an examining court as has been said, which I certify.

JUAN ANTONIO DE ECHAV.

Assisting witness:
JOSÉ RAFAEL LOPEZ.
Assisting witness:
JOSÉ BENITO LOPEZ.

Survey.

In the watering place above mentioned of the Rio Grande del Nort', being in it on the second day of the said month and year, I, the aforesaid judge, accompanied by assisting witnesses, adjoining proprietors, and neighbors (colindantes y circumvecenos) as well within as without the said potrero, which are the same, since there are no others than those already named for the actual inspection, I ordered D. Manuel de Surrato, the surveyor nominated and sworn in due form for this
303 survey, to begin to exercise his office, and he, before me, the witnesses, and the other persons present as aforesaid, took a staff of the usual length, and attaching to it one of the ends of the measuring cord (cordel) prepared for this purpose, measured away from the said staff and gave the cord fifty varas in length, the vara being that used for measuring cloth in Castile, and the one customary in this province of New Santander, and having measured off the said fifty varas he attached the said cord at the place where they ended to another staff of the same size, so that between both there were only measured the said fifty varas, and setting a compass he ran this first line from the aforesaid watering place, course east, going in a straight line along the meanders of the said Rio Grande down the stream, arriving with five hundred and eighty-four "cordellas" (measure of fifty varas each) at the aforesaid river at a st (derrame) from it, by which in its freshets it fills with water a tank (tanque) which was left above (que quedo per la parte de arriba) at a distance of six cordeles, which was left as a natural landmark (per lindero), in which place I ordered the denunciant, D. José Salvador de la Garza, to establish a more exact (fixed) mark (mas siñal fija) as a corner (mojonera); then remaining on this line, towards the south some recesses and elbows (balsas y recodos) which the
304 bends of the above mentioned Rio Grande formed, that the surveyor said he would notice after completing the other lines, in order to include in entire amount of the square leagues (sitios) those which might be in the said bends and elbows.

This line being concluded up to the said place of the , I have set it down in this official statement, which as well the said surveyor and interested party, as the rest of the adjoining proprietors and neighbors who are knowing to these facts, have signed before me and the assisting witnesses acting as an examining tribunal as has been said, all of which I certify.

JUAN ANTONIO DE ECHAVE,
MANUEL SURRATTO,
JUAN JOSÉ DE LA GARZA FALCON,
JUAN SALVADOR DE LA GARZA,
PEDRO VILLAREAL.
JOSÉ ANTONIO DE LA GARZA FALCON,
BARTOLOMI TREVIÑO.

Assisting witness:
JOSÉ BENITO LOPEZ.
Assisting witness:
JOSÉ RAFAEL LOPEZ.

Continues.

In the said place of the of the river in which ended the first line, on the third day of the said month and year, before me, witnesses and the other persons, the said surveyor measured the said surveying

cord, making it, as he had made it, fifty varas in length, by the aforementioned vara for measuring cloth in Castile, as upon the foregoing day, and setting the compass, he ran this second line straight to the north, and at two hundred and six cordeladas, we came to the head of one of the lagunes of the sea, besides others that were seen to the east, and having gone round the head of this first one, and various
305 others that succeeded, commenced eating with each other; following always the north course, the surveying cord came into a bend or little pocket, which the said lagunes make, these being on the west and east until they reach the "Lagunas Madras," which are formed by the Arroyo Colorado, and in which its waters empty and flow, there being far within this line, something more than a league, a place improved (poblado) with homes (hacales) and cattle pens, named San José de Retiro, where are living some herdsmen (vaqueras), servants of the aforesaid Don José Salvador de la Garza, and there being no more land on account of our having reached the said Lagunas Madres, and having nothing before us but water, the second line amounted to nine hundred and ninety-three cordeles in the whole, and the cord having been measured over again several times in the distance ran, as was also done on the first day, all of which I set down in this official statement, which the surveyor and interested party, and the others who accompanied us, and were knowing to the facts, have signed before me and the witness with whom I act, as has been stated, all of which I certify.

JUAN ANTONIO ECHAVE,
MANUEL DE SIERRATTO,
JUAN JOSÉ DE LA GARZA FALCON,
JOSÉ SALVADOR DE LA GARZA,
PEDRO VILLAREAL,
JOSÉ ANTONIO DE LA GARZA FALCON,
BARTOLOMI TREVINO.

Assisting witness:
BENITO LOPEZ.
Assisting witness:
JOSÉ RAFAEL LOPEZ.

306 (Continues.)

In the place on the bank of the Arroyo Colorado where it begins and expands its broad lagunes (Lagunas Madres), at which place we arrived by going round and even wading through the water of the lagunes, that we had to the west on the second line, when we entered it, the bend or little pocket before mentioned, which thus remained a natural landmark, together with an artificial one (señal) which was placed there, while at the same time another was placed where this third line began by measuring from one to the other within the Potrero del Espiritu Santo, at a distance from the lagunes, which circumstance induced us to execute the survey in this way, on account of finding no firm ground or foothold there (ingun paso), in which place before me witnesses the denunciant, and others already mentioned; the surveyor again measured his cord, which he made fifty varas from staff to staff by the same vara as aforesaid, and setting his compass, began this third line along the margin of the said creek (arroyo) up the stream; course west and at three hundred and nine cordeles, the aforesaid surveyor noticed that the said creek turned south, as though crossing the Potrero del Espiritu Santo, on which account following the said course to the south as well as the said creek permitted, keeping always near its banks,

307 at a distance of a hundred cordeles it was found impossible to follow any line further on account of the country being inundated by a large lake, and little streams (running into), tributaries of the Colorado, into which they emptied their waters; also by a dense and impassible thicket which joined the said Arroyo Colorado and lake, which entirely prevented the running of this line, but those experienced and well acquainted with the bends which the said arroyo made declared that at some distance beyond the place where we were compelled to stop, the aforesaid arroyo turned again to the west, as to which line the surveyor agreed with the experts and the interested party that it ought to have and did have the same number of varas in length as the front line, on the Rio Grande; that is, five hundred and eighty-four cordales, on account of the second line running along the lagunes (or the second line of the lagunes) (la segunda linea de las lagunas) from the south to the north, and by our actual inspection (vista de ojos) these corresponded to it for the fourth line, one from the north to the south, as indeed the fence seen upon this line shows, and on account of this calculation the interested party was ordered to establish an artificial landmark which might serve as a corner (señal que serviera de mojo-
308 nera), and this official statement all the proper persons, and those who were knowing to the facts, have signed before me, and the witnesses with whom I act as an examining tribunal, as has been said, all of which I certify.

JUAN ANTONIO DE ECHAVE.
MANUEL SIERRATTO.
JOSÉ SALVADOR DE LA GARZA.
JUAN JOSÉ DE LA GARZA FALCON.
BARTOLOMI DE TREVINO.

Assisting witness:
JOSÉ RAFAEL LOPEZ.
Assisting witness:
JOSÉ BENITO LOPEZ.

(Continues.)

In the aforementioned place of the thicket and the lake, which prevented the running of the third line aforementioned, as has been said, which line was concluded (or came to an end) (se concluijo) on the seventh day of the said month and year, the fourth line followed on the eighth day succeeding, in the present and aforesaid month, and as to this last line it was likewise impossible to follow it up with the surveying cord, on account of the impenetrable nature of the thicket, the lakes, and drains (resacas), which, interwoven with the said thicket, made it difficult, by the necessity of deviating from the straight course (per ir dando vuelta) in most of the said line, but it was agreed by the experts and the intel'igent men who accompanied us, that the said insurmountable difficulty (dicho impossibilitad) continued along the said line for a distance of five leagues, and in this the interrested party agreed—till coming, as in fact we came out at the fence,
309 which he had set up on this front in the clear ground (en losaso), at which place the surveyor aforesaid measured his cord, and making it the fifty Castilian varas, set his compass, and observed that the said fence was run from north to south, and pursuing this course, we came at two hundred and twenty-five cordeles to the watering-place where this survey commenced, on the Rio Grande del Norte, where it closed; and adding uniting the two hundred and twenty five cor-

deles with the five leagues through the thicket and water, they make up the quantity of six hundred (seven hundred) and twenty-five cordeles; and the said surveyor, having already made a calculation for this purpose of the bends and elbows which the said Rio Grande forms, belonging to the first line, he declared that in these last, and under the four said lines, were contained fifty-nine square leagues (sitios de ganado mayor), eleven and one-half caballerias, in favor of his majesty, according to his acquaintance (skill) with this act of surveying, ratifying this by the oath which he has taken, all of which I set down in this official statement, before me and my assisting witnesses, the persons already mentioned being present, who signed on their respective accounts; and as to those who could not write, I, the said chief justice of the town of Camargo, and judge commissioned for this business, have
310 done so for them, acting as an examining tribunal; as has been said, I certify.

JUAN ANTONIO DE ECHAVE.
MANUEL DE SIERRATTA.
SALVADOR DE LA GARZA.
JUAN JOSÉ DE LA GARZA FALCON.
BARTOLOMI TREVINO.
JOSÉ ANTONIO DE LA GARZA FALCON.

Assisting witness:
JOSÉ RAFAEL LOPEZ.
Assisting witness:
JOSÉ BENITO LOPEZ.

(Continues.)

And notwithstanding that the adjacent made opposition, inasmuch as they did not present their objections in form, nor exhibit their titles, the justice, acting as commissioner, proceeded to give the public notices required by law, and a day having been appointed for the sale (remate), it was made in the following form:

Sale.

In this said town of Santa Anna de Camargo, on the twenty-second day of this present month and year, and the last day of the public notice for the sale, I, the said commissioned judge, ordered the drum to be beaten in the same place, directly after high mass, and by the voice of the public crier I gave public notice of the sale before the commandant (el s'or capitan), the reverend father, the priest of this town, various neighbors, and D. José Salvador de la Garza, and seeing that the hour had now arrived in which it is and has been usual and proper (regular) to make the said sale, I order the last call to be given, and there was no one who would bid (pusura) more than twenty dollars, which D. José Salvador de la Garza has bid, and the said estate (agostadero)
311 was adjudged to him after twelve calls (con doce pregones) which I made or repeated on this same day of sale, and so that he, D. José Salvador de la Garza, might have it for his own good profit (buena pro), and he signed with me and my assisting witnesses, with whom I act as an investigating tribunal, which I certify.

JUAN ANTONIO DE ECHAVE.
JOSÉ SALVADOR DE LA GARZA.

Assisting witness:
JOSÉ BENITO LOPEZ.
Assisting witness:
JOSÉ RAFAEL LOPEZ.

Acceptation.

In the aforesaid town, on the said day, month, and year, before me, the said justice (teniente), seeing that the thirty days for the daily notice of the sale which I was ordered to give by this order of the government (este superior despacho) were entirely completed, as well as the day which I had fixed for its sale, the said D. José Salvador de la Garza, on his part, was content, and he having expressed his compliance and accepted the said potrero, before the commandant (capitan), D. José de la Garza Falcon, the reverend priest of this town, Brother Francisco Villuendas, the regidor having the first vote, D. Manuel Chapa, the procurator, D. Augustin de la Garza, and other citizens who were present, and in order that this may appear in all time to come, I make this official statement which the said José Salvador de la Garza has signed with me and my assisting witnesses acting as an examining tribunal, all of which I certify.

JUAN ANTONIO ECHAVE.

312 JOSÉ SALVADOR DE LA GARZA.

Assisting witness:
BENITO LOPEZ,
Assisting witness:
JOSÉ RAFAEL LOPEZ.

And the proceeding having been sent up, (the party) exhibited the petition of the tenor following:

Petition.

I, Balthasar de Vidaurri, for José Salvador de la Garza, a resident citizen of the town of Camargo, in the colony of New Santander, in the proceedings as to the denunciation of lands to which he has given the name of Espiritu Santo, according to the record (escrito) of sixty-seven leaves, part the second, so far as the law allows me, state that an order having been issued to take the steps prescribed in the royal decree (acordado) for the grant and sale of these lands, all these steps were taken by the justice of the said town of Camargo, as the paper book (cuaderno) in which he gives an account of his proceedings show, without meeting any other opposition than that of D. Bartolomi Fernandez, an adjacent proprietor on the side of the entrance of the potrero, with respect to the fourth and last line, on the ground of its having happened that one of his estates (terras), which ran into the potrero on the east to a dry well, was crossed and intersected by this line, that he was asked for his titles and did not exhibit them, but a period of three months was
313 assigned to him, counting from the first of September of the year past, to appear to sustain his opposition in this special tribunal, and he not having done so, I charge him formally with contumacy (rebeldia), on the fifty-second leaf.

With respect to the sale of the sitios and caballerias, I ought to represent to your honor that they are valued at two dollars per sitio, and one real per caballeria; but as my principal has suffered so much opposition, as the proceedings prove, and his opponents knew the necessity he was under to have the lands, on account of his (stock) property (bienes) before mentioned, to which he was greatly attached, having been established in them, it was by a motive of malignity and to do him an injury, as the justice (teniente) states, that they bid up the sitios to twenty

dollars; this is an extraordinary disproportion, since what they made him pay is with reference to the price of the valuation nine times more than the proper price, and it is not permitted even in public auctions to sell with such extreme (en esters terminos), for in those au'tions bidders cannot go beyond the highest price (i. e., fixed as the just valuation), and this is much more true when the affair is affected with bad faith and a disposition to do an injury to him who buys from necessity, as was the case in the present instance.

314 Wherefore I pray your honor that while you are pleased to approve the proceedings had and the sale made to my principal, you will be pleased also to reduce the price to what will be just, and this your present judgment will determine; and in case this cannot be done (which he hopes will not be the case), my principal will have to pay the full amount of the twenty dollars for the sitios and the real for the caballerias, which are eleven and a half and fifty-nine sitios, in order that the necessary instrument to serve him as a title, and by virtue of which he can enter into possession of the lands, if he should desire it, may be in good time delivered to him.

And as to all this, submitting it to the examination of the attorney of the treasury (allogado fiscal), I pray your honor to be pleased to order as I here ask, and I take the formal oath as to all necessary averments, etc.

Doctor MANUEL DE GARISNAIN ARANGUTI.
BALTISAR DE VIDAURRI.

Order.

Mexico, the seventeenth of July, one thousand seven hundred and eighty.

To the attorney of the treasury (or of the government):

The oidor and special judge has so ordered (as above prayed), and signed with his rubric.

Marked with a rubric.

Before me,

JOSÉ DE MONTAVAN,
Royal and Provincial Notary.

315 *Reply of the attorney of the treasury.*

The attorney of the treasury, upon examination of these proceedings on the denunciation made by D. José Salvador de la Garza of the potrero called that of the Espiritu Santo, in the colony of New Santander, says: that, by virtue of the second order issued for the proceedings under the royal decree (acordado), the statements of the party and those taken officially were received in the fifth paper book, by which the land was shewn (resulto), and the denunciation having been publicly announced (publicada) on the *the* thirty-first leaf, the actual inspection (vista de ojos) and survey followed, in which it was found (reconocio) that the potrero contained fifty-nine "sitios de ganado mayor," which were rated at two dollars, besides eleven and a half caballerias, estimated at a real, at which price the denunciant made a bid, and public notice having been given, another third party appeared who made various bids, until on running up to twenty dollars for each sitio, the sale was made to the denunciant himself, without any important defect appearing in the said proceedings, since it is of no moment

that the denunciation was published after the testimony had been taken, and though this did not proceed' the citation of the neighbors (circumviceno), on account of the distance of their residences, they were
316 received for the actual inspection (vista de ojos) and survey, in which they were present, according to the thirty-third leaf on the reverse, and the following.

The matter most worthy *most worthy* of note which appears (in the proceedings) is the opposition which D. Bartolomi Fernandez made on the fortieth leaf, saying that by the line which had been run from the north to the south some land of his was taken, since his tract ought to extend to a dry well, which had been adopted as a boundary in the surveys made in favor of D. Narciso Cavazas, but on notifying him, on the reverse of the leaf, to exhibit his titles, he answered that they were in this tribunal, on which account he was given, according to leaf fifty-two, a period of three months, counting from the first of September of the year last past, to appear in this tribunal to support his opposition, which he has not done in more than ten, reckoning from that time.

To this it may be added that the proceedings and surveys, which were made upon the application of D. Narciso Cavazas, are those that begin the first paper book (cuaderno) of these acts (autos), in which it appears, on the thirtieth leaf, that they ran below the watering-place (abrevadero) of D. Eugenio and D. Bartolomi Fernandez, and these (surveys) were disapproved by your honor, on the reverse of the fifty-first leaf, on account of its having appeared that the denunciant, D. José Salvador de la Garza, had settled (poblado) the potrero
317 from the year seventeen hundred and seventy-one, and had denounced it in that of seventy-two, before the lieutenant-general of the colony, and that various other persons had joined him under his protection or with his assent, and placed there their stock, among whom was the aforesaid Cavazas, and that the latter, notwithstanding this, denounced almost all the potrero, giving it the name of Santa Rita; and after the proceedings required by the royal decree (acordado) had been had, an application was made by the denunciant, and they were declared of no avail, and ordered to be made again in favor of D. José Salvador de la Garza, who was the first to settle and denounce, whence it follows that the surveys made upon the application of Cavazas were of no benefit to him nor to Fernandez, who has exhibited no other title, and the more readily, as it may be inferred, that he also entered under the protection of the denunciant, or of some one of those to whom he had granted permission to introduce their stock. It ought also to be observed that the valuation of the sitios was two dollars for each one, and that on account of the bids they were knocked off to the denunciant (for) at the rate of twenty dollars, on which account he asks the price to be reduced to what the prudent judgment of your honor may think right, although in case this is not done, he states
318 that he will have to pay the full amount, compelled thereto by necessity, and on this point it is to be noticed that on the fifty-fifth leaf of the fifth paper book, the commissioner (comisario) states that the citizens of the town of Reynosa, to injure the denunciant, ran up the price to twenty dollars.

It also appears by the first paper book, on the reverse of the fifty-eighth leaf, and the following, that the said citizens, influenced from that time fourth by D. Narciso Cavazas, filed their opposition (opuseeion), on the seventy-fourth leaf, to the grant of these lands to Garza, and colluding together, as the justice (teniente) of the said town gives us to understand, threw obstacles in his way, by preventing the per-

formance of the proceedings required by the royal decree, until a second order was issued, committing them to the justice of Camargo.

It likewise appears on the reverse of the thirty-fourth leaf of the first paper-book, that when the first proceedings were had on the application of Cavazos, each sitio de ganado mayor was valued at twelve reals, to which the attorney of the treasury (alogado fiscal) ought to add, with the good faith which belongs to his office, that in the internal provinces (provinces interna, and in distant places, sitios de ganado mayor are generally valued at these prices, of twelve reals and two dollars, or of three or four dollars, and on some occasions at
319 one dollar; and that in the proceedings under his custody, as to the estate of Carristos, in the same jurisdiction, they are rated at two dollars, and in others upon which he is engaged, as to lands surveyed between the towns of Reynosa and San Fernando, denounced by D. Antonio de Urizan, the valuation was made at four dollars, by which the attorney of the treasury does not oppose your honor's exercising the functions belonging to your office, and reducing the price to the amount which you may think right upon consideration of the whole matter. Your honor will be pleased to approve the proceedings had, adjudging or granting by way of sale to the denunciant, D. José Salvador de la Garza, the fifty nine "sitios quando mayor," and eleven and a half caballerias of potrero del Espiritu Santo, under the natural outlines (linderos), which the surveyors state (que espresan las medidas), and ordering that when the amount which the sale brought, or that to which your judgment may reduce it, is fully paid, and the duty of "media anata" satisfied, a report be made with these proceedings annexed to the royal audience, for the confirmation, if such should be their supreme pleasure, and that after their return (in the proceedings) the corresponding title be issued.

Mexico, and July twenty-second, one thousand seven hundred and eighty.

Licentiate.

MARTIN DE ARAMBURU.

Order.

320 Mexico, the twenty-ninth of July, one thousand seven hundred and eighty.

In consideration of these proceedings, together with what is asked by the attorney of the treasury, I approve the proceedings had, and I adjudge and grant, by way of sale (hago adjudicacion y merced, per via de venta), to Don José Salvador de la Garza, the fifty-nine sitios de ganado mayor (square leagues) and eleven caballerias of land under the natural boundaries (linderos) which the surveyors state (que expresan las medidas).

And in consideration of the circumstances of the affair, and the ill-designed vexation of the bids that were made, it being apparent that this was done with the intention to injure the denunciant, by reason of the permanent establishment (radicacion) of his property (bienes), in the potrero del Espiritu Santo, and it appearing, as it does appear in this tribunal, by different documents (espedientes) which are here preserved, that *that* the sitios de genado mayor in these places are valued and sold, the highest at four dollars, I think it proper to reduce the price from the twenty dollars to that of eight dollars, to which sum it amounts by quadrupling the valuation of these sitios, and upon the

full payment into the royal treasury chest (caja) of this court of the four hundred and seventy-two dollars, to which this amounts, together with the eleven reals for the eleven caballerias, and their media
321 annata, these proceedings (autos) shall pass to the royal audience for the confirmation of this grant, and when they are returned, notice of it shall be given for the issuance of the title, or whatever may be fitting.

D. Francisco Xavier de Gamboa, of the council of his majesty, his oider in the royal audience of this New Spain, and special judge of sales and purchases of vacant and public (realengas) lands and waters, has thus ordered and signed.

GAMBOA.

Before me.

JOSÉ DE MONTATVARE,
(*Escubano Real y de Provincia*) *Royal and Provincial Notary.*

Order (*billett.*)

To the royal officers of the royal treasury and chest (hacienda y caja) of this court.

Be pleased to order the receipt of four hundred and seventy-three dollars three reals, at which D. Francisco Xavier de Gamboa, as special judge of vacant and public (realengas) lands and waters, has made adjudication and grant by way of sale to D. José Salvador de la Garza of fifty-nine sitios de ganado mayor, and eleven caballerias of land within the limits of the colony of New Santander, jurisdiction of the new kingdom of Leon. And this amount shall be placed to a separate account, in consideration of what is usual for its remittance to Spain in the customary form, returning this order endorsed, that it may appear in the proceedings on this subject.

Mexico, the twenty-ninth of July, one thousand seven hundred
322 and eighty.

End'rs'ment.

José de Montalvan, royal and provincial notary. Entered on the two hundred and forty-second leaf (fojas) of the book of orders (villetes) on the third of August, one thousand seven hundred and eighty. Guerrero.

Another.

On the thir' of August, one thousand seven hundred and eighty, the four hundred and seventy-three dollars three reals (tomines) which this order mentions were paid into this royal chest (caja).

Mexico.

CARRILLO.

Certificate.

On the third of August, one thousand seven hundred and eighty, D. José Salvador de la Garza, to whom the special judge of lands has adjudged and granted by way of sale fifty-nine sitios de ganado mayor and eleven caballerias within the limits of the colony of New Santander, paid in reals of this court eleven dollars six reals and eight grains, which the royal duty of media annata imposed, computed at the half of what

at five per centum the amount of four hundred and seventy-three dollars three reals brings, which latter sum he has paid (servido), as appears by the order, which, with the indorsement of the royal officers, remains in this general office of accounts of the said royal duty under my charge.

In testimony whereof, and that it may appear wherever proper, I give the present certificate in Mexico, on the said day, month, and year.

LASARO DE ARROCETO Y GARZA.

323 *Reply of the fiscal* (2), *nearly effaced.*

VERY POWERFUL LORD: The only thing which can be found to prevent (como ebarase) the grant and the sale of the lands of the potrero del Espiritu Santo, deserving the supreme confirmation and approbation of your highness, is that D. Bartolomi Fernandez has not yet been heard as to the opposition he made in respect to a certain place in them, and likewise that the sale and adjudication (remate) has not been made for the price of twenty dollars, which the bidder, D. Jos' Salvador de la Garza, offered for each sitio, being reduced by your special judge to that of eight dollars, which seemed to him to be their just and true worth; and as to the first point, it must be supposed that the said D. Bartolome Fernandez, although required, has not exhibited or shown the titles by virtue whereof he made his opposition, which circumstance persuades us that this opposition was entirely based upon the proceedings and surveys had upon the application of D. José Narciso Cavazos, which, as they were disapproved and annulled, could not give him any right; and this together with the fact of his not having appeared in the special tribunal either in the three months assigned to him, or in the other seven which have elapsed since, induces a violent presumption that *that* his opposition was malicious and unfounded, and raised (deducida) with
324 the object of hindering and delaying the resolution of the matter to the prejudice not only of D. José Salvador de la Garza, but also of the royal treasury, on which account it is proper that it be neither as of moment nor worthy of such attention as to delay or suspend, on its account, the confirmation.

As to the reduction and abatement of the price of the sitios made by your special judge, although on the one side it must be considered that the cause of the sale of the said sitios coming to be made as high as twenty dollars was that D. Salvador de la Garza had suffered so much opposition, and his opponents had learned the necessity he was in of obtaining these lands, on account of his stock having been established in them, so that assured by this circumstance that Garza would not hesitate (repararia) as to the price, by a motive of malignity, and to do him an injury, as the justice (teniente) states, they ran up the sitios to twenty dollars. Still, on the other side, it is to be noticed that as to the first bid of ten dollars it cannot be said there was fraud in it, because this bid is not so much out of proportion with the two dollars at which the sitios were valued, and this is more evident, since (y mas cuando) as the attorney of the treasury (abogado fiscal) states, and the aforesaid order of your special judge supposes, in those provinces the sitios are generally
325 worth two, three, or four dollars, the distance from which sum to that of ten dollars is not so great that it can be said to exceed the bounds of justice, particularly if we reflect that things are worth as much as they will bring, on which consideration it is the opinion of the fiscal (i. e., the attorney-general) or chief law adviser of the crown, that it would be proper to abate and reduce the amount of twenty dollars, at

which property was knocked off (se verificó el remate), to that of ten dollars, which is the mean, and at which the first bid was made.

Wherefore your highness will be pleased, if it should be your supreme pleasure, to confirm and approve the grant and sale, made by the special tribunal to D. José de la Garza, of the lands of the potrero named the Espiritu Santo, under the limits and natural outlines (terminos y linderos) which the surveys state (que expresan las medidas) to do so, with the proviso that he must contribute and pay the other two dollars belonging to each sitio, its price being reduced to that of ten dollars, the proceedings being then returned to the said tribunal, in order that after the aforesaid payment is made the corresponding title may be issued to him.

Mexico, October twenty-first, one thousand seven hundred and eighty.

MERINO.

Order.

Mexico, December eleventh, one thousand seven hundred and eighty.

326 Let it be reported with the proceedings annexed.

The Regent:

VILLARRULTIA.
ASEDO.
Licentiate FLORES.

Order of the royal audience.

In the city of Mexico, on the eighteenth day of July, one thousand seven hundred and eighty-one, the President Regent and oiders (Precedente Regente y Oideres) of the Royal Audience of New Spain, having examined the proceedings which the Oider D. Francisco Xavier de Gamboa, special judge of lands and waters, has reported as the denunciation made by D. José Salvador de la Garza, of the potrero named Espiritu Santo, in the colony of New Santander, in which are comprised fifty-nine sitios de ganado mayor and eleven caballerias of land, in order that the adjudication which the said judge, on the twenty-ninth day of July, made of the said sitios and caballerias of land might be confirmed, reducing the price from twenty dollars, to which the bids that were made ran, to that of eight dollars, to which it amounts by quadrupling the estimated value of the said sitios, for the reasons which he states in his order; having examined likewise the proceedings that were had by order of the said minister for the said adjudication, and what is asked by the fiscal of his majesty in his reply of the twenty-ninth of October of the same year of eighty, with the other fitting circum-
327 stances, have said that they confirmed and have confirmed (confirmaran y confirmaron) the grant made by way of sale by the aforesaid special judge of lands to D. José Salvador de la Garza, of the sitios and caballerias which his decree of the twenty-ninth day of July of the year last past comprehends, with the proviso that the price of each one of them must be paid at the rate of ten dollars, and that consequently whatever with respect to this is wanting to complete the amount must be contributed and paid, as likewise the sum of one hundred dollars as a contribution to his majesty for the favor conferred in excusing him from having to apply to his royal person for the (confirmation) in the form provided in the royal order (cedula) of the fifteenth of October, one thousand five hundred and forty.

And they likewise ordered, and have ordered (mandaran y mandaron), that for the prompt fulfillment of all, everything respecting this subject be returned to the aforesaid tribunal of lands.

And so they have decided and signed by their rubrics.

Regent:

VILLAVRUTTIA.
ASEDO SUYANDO.
JOSÉ MAXIMO VILLASECA.

This corresponds with its original, to which I refer.

I certify.

JOSÉ MAXIMO VILLASECA.

Order (billette.)

To the royal officers of the royal treasury and chest of this court:

328 Be pleased to order the receipt from D. Salvador de la Garza of a hundred and eighteen dollars on account of the two additional dollars for each sitio of the fifty-nine which D. Francisco Xavier de Gamboa, special judge of lands and waters, has adjudged and granted to him by way of sale in the colony of New Santander, as is provided by the royal audience, and also one hundred dollars that the said royal tribunal has fixed for the favor of the confirmation. And this amount shall be accounted for separately in view of what is usual for its remittance to Spain in the customary form, this order being returned endorsed that it may appear in the proceedings upon this subject.

Mexico, the twelfth of September, one thousand seven hundred and eighty-one.

JOSÉ DE MONTAVAN,
Royal and Provincial Notary.

Endorsement.

Entered on the reverse of the hundred and seventy-third leaf of the book of orders (billetes) on the thirteenth of September, one thousand seven hundred and eighty-one. Barrandeguel.

Another.

On the thirteenth of September, one thousand seven hundred and eighty-one, the two hundred and eighteen dollars contained in this order were paid into the royal chests (cajas).

Mexico.

CARRILLO.

Certificate.

On the thirteenth of September, one thousand seven hundred and eighty-one, D. Salvador de la Garza, to whom the royal audience

329 of this capital has confirmed the grant which D. Francisco Xavier de Gamboa, as special judge of lands, has made to him, of fifty-nine sitios within the limits of the colony of New Santander, ordering him to pay two dollars more for each sitio on the price for which the grant was made to him, has paid into the royal chests of this court sixteen dollars five reals nine grains, which the royal duty of media annata caused, in this form, two dollars seven tomines three grains, as

the half of the income at five per centum per annum of the sum of one hundred and eighteen dollars, the amount of two additional dollars on the value of the lands, and the remaining thirteen dollars six tomines six grains for the favor of the confirmation, as is shown by the order which, with the endorsement of the royal officers, remains in this general office of accounts under my charge.

In testimony whereof, and that it may appear wherever proper, I give the present certificate in Mexico on the said day, month, and year.

On account of the absence of the accountant.

DIEGO DE COVARRUBIAS.

Continues.

In consideration of the order of the president regent and oidors (precedente regente y oidores) of the royal audience, and in pursuance of a decree which I made on the tenth of the current month, I have determined to issue these presents, by which, exercising the powers conferred on me by the royal decree and instruction of the fifteenth of October, seventeen hundred and fifty-four, I declare that D. José
330 Salvador de la Garza has complied with what is ordered in it (in the royal order), and in the name of his majesty (whom may God preserve), and without prejudice to any third person or community of Indians, I admit him to purchase, I adjudge and grant by way of sale fifty-nine sitios de ganado mayor and eleven caballerias of land within the limits of the colony of New Santander, and not exceeding its natural boundaries (linderos).

I sup'ly and dispense with any defect of *of* the grant or vicious titles, and the defects on his possession of these lands, in order that he may not be obliged either on this account or on any other to submit to a resurvey (no se le olique á medidas), nor compelled to exhibit any other title to be given to him, since I now give him as complete and sufficient a title as he may have need of for the property (propriedad) of the said lands, whose fruits and whatever ways (entradas y salidas), uses, customs, and servitudes it has or possesses by custom and by law (de fuero y de derecho) he may enjoy, without excepting or reserving anything from the said D. José Salvador, or whoever may have his title (causa) or represent his rights, with the proviso that he must stock and cultivate them with what they require, in conformity with the ordinances of the kingdom which treat upon this subject, and that if at any time the
331 whole or a part of the said lands is needed for any establishment (fundacion) of a fort, town, or place, he must leave what may be thus needed free and unincumbered (libr y desembarasado) on being paid what it may be worth at the time (pagandole lo que á la sazon valua), with which provisos let them (i. e. the lands) be his and his heirs and successors, as held and acquired by their own and a legitimate title of property, which is these presents.

And I order the justice of that province that whenever the aforesaid D. José Salvador de la Garza may ask it, he shall give him entry and put him in possession of the said lands on the citation of the adjacent proprietors, notwithstanding any opposition and without allowing any diminution of his rights (in causar dispojo alguno), and that the said justice shall not consent that he be deprived of the possession given him without being first heard, according to custom and law, delivering to him when this is done (vincedo) the proceedings which may be had in continuation of this title as a protection of his rights.

Mexico, the twenty-sixth of September, one thousand and seven hundred and eighty one.

Interlined: Fifty-one. Incorrect; crossed out; exhibitan; fifteen; of the province; thirty and incorrect.

DON FRANCISCO XAVIER DE GAMBOA.

By order of the oidor and special judge.

JOSEPH DE MONTALVAN,
Royal and Provincial Notary.

Fees, sixty dollars, including paper and writing, and no more, upon my oath (asi lo pero).

A rubric.

332 Your honor admits to purchase, adjudicates, and grants, by way of sale, fifty-nine sitios de ganado mayor, and eleven caballerias of land, within the limits of the colony of New Santander, to D. José Salvador de la Garza, in consequence of his having paid into the royal chest of this court the amount of their price, the favor of the confirmation, and the media annata charged to him, etc.

On the last page.

Mexico, September twenty-six, one thousand seven hundred and eighty-one.

Title of purchase, adjudication, and grant of fifty-nine sitios de ganado mayor, and eleven caballerias of land beside, made by the special judge of this kingdom, and confirmed by the royal audience, in favor of D. José Salvador de la Garza, a citizen of the town of Camargo, within the limits of the colony of New Santander, etc.

On the first title-page of the old title.

MEXICO, *September* 26, 1781.

Titles of lands in the potrero named that of Espiritu Santo, margins (margines) of the lagunes of the sea of the Gulf of Mexico, acquired (conquestados) by D. José Salvador de la Garza, resident citizen of the town of Camargo, in the year 1781.

A rubric.

333 UNITED STATES OF AMERICA,
District of Texas:

I, James Love, clerk of (torn off) district court of the United States for the district (torn off) certify that the foregoing is a true copy, tak (torn off) original document on file in this court, in (torn off) Rafael Garcia Cavazos and others again (torn off) man and others.

Given under my hand and the se (torn off) the said court this the thirteenth da (torn off) May, in the year of our Lord one th (torn off) eight hundred and fifty-one, and of (torn off) Independence of the United States the seventy-fifth year.

[SEAL.] JAMES LOVE, *Clerk.*

STATE OF TEXAS,
County of Galveston:

I, William G. Hale, of the said county and State, being duly sworn, depose and say that the foregoing document is a correct translation of

a copy of the original testimonio of title issued to Don José Salvador de la Garza for the agostadero del Espiritu Santo, and that the portion from the red line on the second page is a correct translation of the original testimonio itself; and I further say that the said translation was originally made by me; that I have compared it with the original in Spanish now on file in the district court of the United States for the district of Texas, and that it is correct and faithful.

334 In testimony whereof I have hereunto subscribed my name and affixed my seal of office, at the city of Galveston, this thirty-first day of May, A. D. one thousand eight hundred and fifty-one.

[SEAL.] E. P. HUNT,
Notary Public.

Statement of facts continued.—An act of the legislature of Texas, January 8, 1852, repealing the act of 1850, which incorporated Brownsville. (D. 2.)

AN ACT to repeal an act to incorporate the city of Brownsville, approved January 24, 1850.

SEC. 1. Be it enacted by the legislature of the State of Texas, That an act entitled "An act to incorporate the city of Brownsville," approved the 24th of January, 1850, be, and is hereby, repealed.

SEC. 2. That this act take effect and be in force from and after the first day of March, 1852.

Approved, January 8th, 1852.

THE STATE OF TEXAS,
Department of State:

I, James P. Newcomb, secretary of state for the State of Texas, certify that the foregoing printed page contains a true copy of an act entitled "An act repealing an act to incorporate the city of Brownsville," taken from the original in the department of state, with which it has been carefully compared.

In testimony whereof I have hereunto signed my name, and
335 have caused the seal of the State of Texas to be affixed, at the city of Austin, this 21st day of May, A. D. 1873.

[SEAL.] JAMES P. NEWCOMB,
Secretary of State.

Statement of facts continued.—An act of the legislature of Texas, February 10, 1852, relinquishing to the heirs and assigns of Salvador de la Garza. (D. 3.)

AN ACT to relinquish the right of the State to certain lands therein named.

SECTION 1. Be it enacted by the legislature of the State of Texas, That the State of Texas hereby relinquishes all her right and interest in the following described lands to the original grantees thereof, their heirs and legal assigns, to wit:

* * * * * * *

COUNTY OF CAMERON.

* * * * * * *

9. Rafael Garcia, seven leagues, called "Santa Isabel."

* * * * * * *

35. Ygnacio Traveno, five and a half leagues, called "San Martin."

* * * * * * *

38. Manuel de la Garza Lasa, six and a fraction leagues, called "Buena Vista."

* * * * * * *

42. Jose Salvador de la Garza, fifty-nine and one half leagues, called "Espiritu Santo."

* * * * * * *

SEC. 2. That it shall be the duty of those claiming any of the
336 lands named in this act to have the same surveyed by the district or county surveyor of the county in which the same may be situated, and upon the return of the field notes thereof to the general land office, the commissioner is hereby authorized and required to have the same platted on the maps of his office, and issue patents for the same in accordance with existing laws; provided that no patent shall issue for a less amount than the original grant. That the owners of said lands shall be required to pay the taxes due on the same from the date of the organization of the respective counties herein mentioned, which taxes shall be paid and legal vouchers for the same exhibited to the commissioner of the general land office, before the patent to the same shall issue.

SEC. 3. That in all cases where the original title-papers of lands claimed by this act, or which were exhibited to the commissioners to investigate land titles west of the Nueces, were lost by the wreck of the steamer Anson, the commissioner-general of the land office and the supreme and district courts of this State are hereby authorized to recognized as of equal validity all authenticated copies that the parties may have been able to obtain.

SEC. 4. That the report of the land commissioners to investigate land titles in certain counties therein named, under the act approved
337 February 8th, 1850, shall be deposited with the commissioner of the general land office.

SEC. 5. That the confirmation herein extended to the lands mentioned in this act shall in no way be construed to interfere with any rights which may have accrued to other parties before the passage of this act, but the same shall remain without prejudice; provided, that nothing in this act shall be so construed as to relinquish the rights of the State to any of the islands or salt lakes situated in the territory embraced in this act.

Approved, February 10th, 1852.

THE STATE OF TEXAS,
Department of State:

I, James P. Newcomb, secretary of state for the State of Texas, certify that the foregoing three printed pages contain a true and correct copy of an act entitled "An act to relinquish the right of the State to certain lands therein named," taken from the original in the department of state, with which it has been carefully compared.

In testimony whereof I have hereunto signed my name and have caused the seal of the State of Texas to be affixed, at the city of Austin, this 21st day of May, A. D. 1873.

[SEAL.] JAMES P. NEWCOMB,
Secretary of State.

338 *Statement of facts continued.—Last will of Franc'a Cavazos.* (*D.* 4.)

Francisca Cavazos' last will, and probate and adjustment thereof.

Translation of the testament of Doña Maria Francisca Cavazos, filed in the last of the above causes, and to be offered in evidence in both, on the part of the plaintiffs.

In the name of the omnipotent God, and of our Lady the Virgin Mary, conceived without original sin from the first moment of her purest existence, amen:

Be it known and notorious, that I, Doña Maria Francisca Cavazos, a native of the town of Reynosa, and resident of this congregation of our Lady of Refugio, legitimate daughter of Narciso Cavazos and of Doña Maria Ignacio de Inojosa, being unwell and confined to my bed with a sickness which it has pleased God to visit me, being in my perfect natural judgment and understanding, believing, as I do believe, in the mystery of the most blessed Trinity, Father, Son, and Holy Ghost, three distinct persons and one holy God, truly omnipotent; I, likewise, in the incarnation of the Divine word in the purest womb of Mary, always a virgin, and in all the other mysteries which our mother, the Holy Roman Catholic Apostolic Church, holds, believes, and confesses, in the faith and belief whereof I have lived, and declare that I die, a Christian of
339 the Roman Catholic and Apostolic Church, redeemed by the inestimable price of the purest blood of our Lord Jesus Christ, fearing, as I do fear, that death, which is the common lot of all created beings, may come upon me unawares, and desiring to save my soul, choose and name as my patrons and advocates and intercessors before the tribunal of God, where I am to appear to give an account of my life, the Most Holy Virgin of Refugio, the Glorious Patriarch St. Joseph, the Archangel St. Michael, saint of my name and devotion, and all the saints of the court of Heaven, that when the hour of my death shall come, and my soul shall leave my body, they may transfer it from this world to the safe harbor of salvation, where I hope they will intercede for it; for it is my desire and prayer thay my soul may be saved; I ordain and make this my will in the form and manner following:

1° First. I commend my soul to God, our Lord, who created it, and redeemed it with the inestimable price of his blood, and I beseech His Majesty to raise it to His glory, for which it was created; and my body I commit to the earth, since it was formed from it.

2° item. I order my body to be laid out in the grave-clothes prescribed by our Seraphic Father St. Francis, and that my burial be of the first class, though humble and unostentatious.

3° item. I order that my body be buried in the holy church of this congregation, in which the pains of seized me, near the first steps of the altar.

340 4° item. I declare that I have been married according to the canons of our mother, the holy church, to D. Blas Maria de la Garza, by which marriage we had no issue during the entire continuance of the marriage for ten years, and having no forced heirs, it is my will to appoint (nombrar) as my heirs, in the first place, my sister Doña Maria Ignacio Cabazos, and in the second place, to my niece Doña Maria Josefa Cabazos, whom I appoint as my heirs in their respective portions of my property (en la parte que les corresponda de mis bienes). I declare it, so it may be known.

5° item. I declare that when I contracted marriage with my husband,

D. Blas Maria de la Garza, I put in his power the following property: Forty five mares; six colts, two years old; two jackasses; a gentle horse; three geldings, fully grown; six colts, two years old; fifteen young foals, branded; two leading (stallions) horses (cavallos padres); ten cows; four bulls; and I do so declare it, that it may be known. Branded, blotted—incorrect.

6º item. I declare that I have received what was coming to me from my maternal inheritance on the part of my deceased mother, Doña Maria Ignacia de Inojosa, and am entirely satisfied; I do declare it, that it may be known.

7º item I declare that of the paternal inheritance which ought to be coming to me on the part of my deceased father, D. Narciso Ca-
341 bazos, I have received one drove of twenty-eight mares with a stallion, and ten colts a year old; a gentle mule, and another two years old, a young mule branded; two gentle horses; seven jennies; sixty sheep; fifteen lambs; a large crowbar; a middling sized axe; and a cart very much used; a gridiron; I so declare it that it may be known.

8º item. I declare that I have a gentle saddle mule in the possession of my brother, D. José Manuel Cavazos, which I give to him, provided God shall call me to judgment; I so declare it, that it may be known.

9º item. I declare that I have taken out of the estate of Carisitos a certain number of beeves, as appears in the accounts, which remain in the possession of my stepmother, Doña Guadaloupe Cabazos, or in that of D. Lopez de Aleman, tithe proctor of Reynosa and of this congregation; I so declare it, that it may appear.

10º item. I declare that I have at interest in the possession of D. José Perez Rey two thousand dollars in reals, solid Mexican silver, together with its interest at five per cent., which amount the said D. José Perez Rey, on the twenty-fourth day of November, one thousand eight hundred and seventeen; of which amount I have received on account of the interest for the present year eight reales; I so declare it, that it may appear.

11º item. I declare that I have in the possession of Captain D. José Miguel Paredes, at interest, the quantity of five hundred dollars, also in silver, with the interest upon the same; the obligation where-
342 for is dated on the first of December, one thousand eight hundred and seventeen, having received the interest for the present year, eighteen hundred and eighteen and nineteen; I so declare it, that it may appear.

12º item. I declare that my residence in this congregation, which is composed of a hall, a bed-chamber, and a lot of ground fenced with brush, with whatever is to be recognized as my property from the gates within; I so declare it, that it may be known.

13º item. I declare that I inherited from my deceased husband, the ensign D. Blas Maria de la Garza, the quantity of sitios (square leagues) of land, or thereabouts (no completos), situated in the estate (agostadero) of Espiritu Santo, on the other side of this Rio Grande, of which quantity I have sold, in actual sale (venta real), ten sitios to Captain D. José Miguel Paredes; I do so declare it, that it may appear.

14º item. I declare (as mine) the increase of stock that I have in the part of my deceased husband in the said estate, as well of horses as of other large stock; I do declare it, that it may be known.

15º item. I declare as my property the portions of each that I have on my father's and my mother's side in the estate of Corrisitos, with the

corresponding increase, as well of horses as of cattle; I so declare it, that it may be known.

16º item. I declare as my property the estate of Sombreretillo, which I have inherited from my deceased husband, as appears by his last will, leaf thirty-eight and clause nineteenth; I so declare it, that it may be known.

343 17º I declare that I owe Cayetano Medrano the amount of twenty reals and two hides; I declare it, that it may be known.

19º item. I declare that it is my will that the two thousand dollars which are at interest, in the possession of the deceased D. José Peres Rey, should be placed at interest with a creditable person for the good of the soul of my deceased husband and for my own; I so declare it, that it may be known.

20º item. I declare that it is my will as to the five hundred dollars above mentioned that out of them my funeral, burial, and forced legacies (mandas forzosas) should be paid for, and that my heirs should dispose of the rest; I so declare it, that it may be known.

21º item. I declare that it is my last will to appoint for the execution of this testament executors to take possession of my property, and I appoint as such, in the first place, my sister, Doña Maria Ignacio Cabazos; in the second place, my niece, Doña Bartola Cabazos; whom I charge, as such my executors and trustees, to keep, comply with, and execute my said testament, according to and in the manner prescribed in it and by its clauses, within the limits of the law; that for all and for what appertains to and is suitable and proper for it I confer upon them all my power and authority, so far as may be necessary and requisite; and for its greater validity and binding force I have requested the alcalde of this congregation, D. Roman Garcia, to interpose

344 his authority and judicial decree so far as may be necessary.

And I, the said alcalde, complying with the duties of my office, have caused these respectable citizens to be present for the greater validity of this testament, to serve as witnesses; they being D. Cayetano Medrano, D. Juan Longoria y Garcia, and D. Pedro Perda, all of this neighborhood. The testatrix did not sign, not knowing how to do so. I have signed with my assisting witnesses, in the absence of every royal or public notary, there being none within the limits prescribed by the law.

I certify.

JOSÉ RAMON GARCIA.

Assisting witness: JOSÉ ANTONIO GONZALES.
Assisting witness: JOSÉ CAYETANO PINEDA.

This corresponds with the original instrument which remains in the archives under my charge, marked with the number 18, in the package enrolled of the years 1817 and 1818, to which I refer, and from which it has been faithfully and legally copied at the request of D. Rafael Cavazos, this the first day of July, one thousand eight hundred and thirty-five.

Witness, the citizens Pedro Treviño, Francisco Mayorga, and Rafael Quintero, of this vicinity.

I certify in testimony of truth.

[NOTARIAL SEAL.] ANTONIO ESCAVEDO, *Notary Public.*

Fees without the search, six dollars. Twenty reales the search over two years.

I certify the foregoing to be a correct translation of the original, made under an order of the court.

WILLIAM G. HALE.

345 *Statement of facts continued.—Extracts from Basse & Hord, record from marginal page* 120 *to end of page* 126, *also from marginal page* 134 "*concerning the will*," *&c., to page* 142, *ending with* "*Joaquin Arguelles, notary public.*" (*D.* 5.)

Concerning the will of Francisca Cabazos.

Francisca Cabazos died in this town, leaving a will, by her authenticated, on the 27th October, A. D. 1818, for want of a notary public, before the alcalde of this district, Roman Garcia, with three instrumental witnesses, viz: Cayetano Madrano, Juan Longoria y Garcia, and Pedro Serda; and of assistance, Antonio Gonzales, and José Cayetano Pineda; by which, after having made a declaration of faith, and having invoked the patronage of the saint, she ordered that her body should be shrouded with the habit of our patron father, Saint Francis, and that her funeral should be great, although humble, and with pomp; that her body should be buried in the holy church of this district, near to the 1st altar, or whereever death might overtake her. She appointed for her executors, with full legal power, her sister Maria Ignacio Cabazos, and niece Maria Josefa, and Bartolome Cabazos. She constituted for her heirs her said sister M'a Ignacio Cabazos and her niece M'a Josefa Cabazos, and revoked all previous wills made by her.

This is the substance of the before-noted will, which was in my possession for this purpose.

Concerning the inventory formalized, and liquidation of the estate inventoried.

346 After the death of Francisca Cabazos, her heirs agreed to make a catalogue of division and partition, according to the inventory and appraisement made by Tomas de la Garza and Francisco Fernandez, who were appointed by the interested parties, from which resulted the value of the effects to be $3,531, in the following manner, viz: $3,300 for 14 sitios of land; $150 for half of one house, lot, and jacal; $29 in cash, and 52 in furniture and wearing; which four parts make the sum of (errors excepted) $3,531, the whole value of effects inventoried on account of the death of Francisca Cabazos, from which deducting $841.41 from the fifth part of the effects of her husband, which, by bequest, belong to Josefa Cabazas; $1,382.81 of interest accruing on this amount since the 15th of August, A. D. 1802, to this date, and retained by her; $118.12½, cost of the funeral; which three parts amount to $2,342.41, there remains the balance of $1,188.59 for the inheritance,

In conformity with which I proceed to make statement of the estate. liquidation, and deductions in the manner following:

Estate.

For 14 sitios of land situated in the pasture land of Espiritu Santo, and Sombretello, valued at	3,300
For ½ on house, lot & 1 jacal	150
Furniture & wearing apparel	52
Cash	29
Total value, as inventoried	$3,531

347 From which four parts are to be made the *the* following:

Deductions in common and general ½ part of the effects of her husband, which by bequest belongs to M'a Josefa Cabazos	841 41
Interest accrued since 15th day of Aug., 1802, and retained in her possession.	1,382 81
Expense of funeral and burial	118 19
Total	$2,342 41

The deductions amount to 2,342.41, which being taken from the amount of estate as inventoried, leaves a balance of $1,185.59 of inheritance to be divided between both in equal parts, for which purpose I proceed to liquidate the property of each, in the manner and form following:

Recapitulation and liquidation of the portion appertaining by right to each of the interested parties in this partition.

Portion of M'a Ignacio Cabazos:

Maria Ignacio Cabazos, sister of Francisca Cabazos, should have for her inheritance $594.29½, which amount is paid with the following effects:

Adjudication and pay.

There is applied to Ignacio Cabazos the pasture land of Sombretillo, for the sum of $800.60, as valued, for pay of those 594.29½, and also to pay $118.19 expenses of the funeral and burial, and the balance $87.52 to Josefa Cabazos.

348	Total of effects applied	$800 00
	" " Ignacia's inheritance	594 29½
Balance in favor testamentary execution		$205 70½

Portion of Joseph Cabasos:

Josefa Cabasos, niece of Francisca Cabasos, deceased, should *should* have for the fifth part of the effects of Don Blas, which she retained in her possession	$841 41
For the interest corresponding and accruing since 15th Aug., 1802, to date.	1,382 81
For her inheritance	594 29½
Total	$2,818 51½

Which amount is paid with the following effects:

Adjudication and pay.

There is given to pay Josefa Cabasos, 10 sitios of land, more or less, in the pasture lands of Espirtu Santo, valued at.	$2,500
½ of a lot with a jacal, & situated in this town & valued at	150
Furniture and wearing apparel	52
Cash	29
Amount to be paid by her mother on account of this testamentary execution	87 41½
Total of effects applied	$2,818 41½
Total of her portion	2,818 41½

She stands paid in full. The property corresponding to D'n Josefa Cabasos amounts to two thousand eight hundred and eighteen, four rials and a half grains, which sum she ought to have by right, and which she remains paid in full.

349 Comparison of this account.

Cost of funeral and burial	118 19
Portion of M'a Ignacia Cabasos	594 29½
" " M'a Jos'fa	2,818 41½
Total	3,531
Value of inventory	3,531

1st. It is declared that the taxes on the lands of San Juan Carricitas, and of San José, mentioned in the inventory of the effects of Francisca Cabasos, and not valued for want of a knowledge of the sitios, and also on account of their being as yet no division made, will be divided between the two heirs, M'a Josefa Cabasos and M'a Ignacia Cabasos.

2nd. It is also further declared that there exists an unsettled claim against Juan Tigerina, which, when liquidated and collected, shall be divided between the said Ignacia and Josefa Cabasos.

3rd. It is declared that as there does not exist of those $2,000 mentioned in clause 19, more than $1,250 due by testamentary execution from Rafael Pariento, said sum should be put at interest for the purpose of paying for masses for the souls of the testatrix and her husband, Blas.

4th. It is also declared that, should there hereafter appear any active claims or effects corresponding to this estate, they should be taken and estimated as an augmentation of estate, and divided in like
350 manner as those inventoried between the heirs. And the same order should be observed with all the debts and charges which may arise against the estate, and which, on account of not recollecting them, are not here liquidated, so that the interested parties remain respectively and proportionably bound by and subject to the adjustment of these according to their just right.

5th. It is declared that if any of the pasture-lands inventoried and adjudicated under the opinion of their being free, should result as being entailed or belonging, either whole or in part, to a third party, and consequently not to this testamentary execution, the principal of the same, and the expense which may accrue to the party to whom they are adjudicated or whom in succession may represent them in case of instituting suit for their recovery, as well as the damages sustained, they should be considered as deficiency of estate (*i. e.* deducted from estate), and the other participant shall credit, without excuse, her respective portion in such manner as to be effectually indemnified from the principal value and from the damages; but they should continue and defend the suit that it may extend to eviction in conformity to right and not in any other manner towards the other parties; and, until this be accomplished, the parties shall have the right to attempt reversion on repetition.

6th. It is declared that in default of those $500 mentioned in clause 20, the heirs are obliged to pay, in equal proportions, the
351 necessary demands there mentioned by giving two rials for each one.

7th. Lastly. It is declared that the expenses of the inventory, appraisement, partition, testamony of adjudication to be made to those interested, paper, and other necessary expenses occur'ing, until the entire settlement, are not set down or calculated, and are to be paid in proportion of three-fifths by Josefa Cabasos, and the other two-fifths by Ignacio Cabasos, with which declaration concluded this partition in conformity with the documents presented, and which I return to the party I received them from, and under my oath to execute well and faithfully ac-

cording to the best of my ability without causing injury to the parties interested.

Witness my signature, this 30th day of June, A. D. 1835, at the town of Matamoras.

(Signed) JOSÉ S. MORA.

We approve this account.

(Signed) JOSEFA CABASOS.
RAFAEL GARCIA CABASOS.

I approve this account of division.

(Signed) MARIA IGNACIO CABASOS.

I, the notary public who affix my signature, certify and attest that the anteceding copy is true and legally taken from the original, which is recorded in the registry or public records of the year 1835, by consent of the parties interested in the partition to whom I refer; and at the request of Juan Treanor, attorney for the parties, I have ordered
352 this to be made out on eleven sheets of sealed paper inclusive, all of the fourth seal of the current biennial.

Matamoras, 12th, A. D. 1852.

(Signed) JOAQUIN ARGUELLES,
Notary Public.

Statement of facts continued—Espiritu Santo; agreement of owners. (D. 6.)

Agreement of owners to divide the Espiritu Santo lands.

This indenture, made and entered into on the twentieth day of November, in the year of our Lord one thousand eight hundred and fifty-three, by and between Doña Estefana Goseascochea de Cortina, on *on* the first part, Doña Feliciana Goseascochea de Tigerena, on the second part, and Doña Maria Josefa Cavazos on the third part, witnesseth:

That in order to put an end to controvery and litigation and the confusion of boundaries, the said parties do hereby mutually agree with each other to establish the partition on dividing lines between their respective shares of the tract of land lying on the left bank of the Rio Grande, in the county of Cameron and State of Texas, known as the "Agostadero del Espiritu Santo," in the following manner: it is agreed that the upper or western boundary line of the said tracts runs through an old ebony post in the place called "La puerta," and that the lower or eastern line, for the purpose of this division alone, is understood to commence at a point on the Rio Grande nearest the place called "El Tanque;"
353 that the exact position and courses of these lines shall be determined by George Lyon, or in case he cannot act by some competent surveyor to be appointed by the parties; but in the absence of such determination, it is understood that the said lines run magnetic north from the Rio Grande to the Arroyo Colorado and Laguna Madre.

It is further agreed that the land included within these lines and the Rio Grande and Arroyo Colorado and Laguna Madre, shall be divided into six parts equal in superficies by lines running from the Rio Grande to the Arrayo Colorado, as nearly parallel as possible; that the first or most western of these parts shall be assigned to the said Estefana Goseascochea de Cortina; the second part coming down the Rio Grande shall be assigned to Feliciana Goseascochea de Tigerina, and the third and fourth parts, next below, shall be assigned to Maria Josefa Cavazos, who represents in this indenture also the interest of the heirs of

José Miguel Paredes, deceased, and their assigns; it being understood that the running of these division lines is intended to determine the exact limits of the several parts now held by the said parties as their separate property, and each of the said parties in confirmation of this division and for the considerations herein set forth has given, granted, released, and conveyed, and doth by these presents give, grant, release, and convey unto each of the other two parties respectively, all right, in-
354 terest, title, and claim in and to the part assigned as above stated to each of the other two parties respectively. To have and to hold the same, with its appurtenances, unto the said party to whom it is thus assigned, their heirs and assigns, forever.

Provided, however, that if from the result of future litigation with other persons the position of the assumed lower boundary line or the mode of division should be so changed as to move the division lines of the said parties higher up, and thus occasion a loss to any of the parties, then the land now assigned to the other two parties shall contribute to this loss by a corresponding change of the division lines; and provided further, that the field notes of the survey of each of the parts herein assigned, when made out and certified by George Lyon, or any other surveyor appointed for that purpose, shall be considered as a part of this deed, and may be annexed hereto; and provided further, that nothing contained in this deed shall prejudice the title of any of the parties to the land lying between the said lower boundary line and the Laguna Madre and Gulf of Mexico, which certain of the said parties claim to be a part of the tract known as the "Espiritu Santo."

In faith whereof the said parties have signed, sealed, and mutually delivered this indenture in triplicate, at the city of Brownsville, the day and year above written.

MA. JOSEFA CAVAZOS. [SEAL.]
FELICIANA GOSEASCOCHEA DE TIGERINA. [SEAL.]
her
ESTEFANA + GOSEASCOCHEA. [SEAL.]
mark.

In presence of—
JUAN TREANOR.
ADOLPHUS GLAVECKE.

355 As to the signature of Estefana Goseascochea de Cortina—
WILLIAM G. HALE.
JUAN TREANOR.

THE STATE OF TEXAS,
County of Cameron:

Be it remembered that on this 22nd day of November, A. D. 1853, before me, Budd H. Fry, a notary public in and for the county and State aforesaid, duly commissioned and sworn, personally appeared Adolphus Glavecke, to me well known, who, being by me duly sworn, stated on oath that he saw Maria Josefa Cavazos subscribe the foregoing instrument of writing, and that he also saw Feliciana Goseascochea de Tigerina affix her mark or firma to the said instrument below her name, which had been subscribed thereto at her request by her daughter-in-law; that the said grantor fully understood the purport of the said deed at the time when it was executed by them, and that he, the said witness, signed the same as a witness at the request of the said grantors.

And thereafter also appeared William G. Hale, to me well known, who, having by me duly sworn, stated on oath that he saw Estefano Goseascochea, otherwise named Estefana Goseascochea de Cortina,

affix her mark to the said instrument of writing at the end of her
356 name, which had been subscribed thereto at her request by her son Sabas Cabasos; that the said grantor fully understood the purport of the said deed at the time when it was executed by her, and that he, the said witness, signed the same as a witness at the request of the said grantor.

To certify which witness my hand and seal of office the day and date above written.

[L. S.] BUDD H. FRY,
Notary Public.

Statement of facts continued.—Copy of deed from Rafael Garcia Cavazos and Maria Josefa Cavazos to Elisha Basse and Robert H. Hord. (*D.* 7.)

Deed from Cavazos & wife to Basse & Hord.

THE STATE OF TEXAS,
County of Cameron:

Know all men by these presents that we, Rafael Garcia Cavazos and Maria Josefa Cavazos, his wife, now residing in the city of Matamoras, and State of Tamaulipas, for and in consideration of the sum of thirty-three thousand dollars to us in hand paid, the receipt whereof is hereby fully acknowledged, have granted, bargained, and sold, released, transferred, and conveyed, and do by these presents grant, bargain, and sell, release, transfer, and convey unto Elisha Basse and Robert H. Hord, of the county of Cameron, State of Texas, all our right, title, and interest whatsoever, and all the right, title, and interest of each and either of us in and to a certain tract of land lying on the left bank of the
357, 358 Rio Grande, in the said county of Cameron, State of Texas, opposite the city of Matamoras aforesaid, including the town site of Brownsville, and bounded as follows:

Beginning at the most northern point or angle of the fence known as the Quartermaster's Fence around Fort Brown; thence running due north to a line drawn at right angles to another line running five thousand varas magnetic north from the centre of the main plaza of the said city of Matamoras; thence and after reaching said lines so drawn as aforesaid, running along said line westwardly to a point due north of the place where the line of a survey made for Charles Stillman strikes the Rio Grande, which place is understood to be so situated that the line runs directly through a warehouse built by John Young, in or near the town-site of Mansfield; thence due south to the point above mentioned; thence following the meanders of the said Rio Grande down to the point where the western or upper line of the said Quartermaster's Fence strikes the said river; thence along the line of said fence to the place of beginning, including within the aforesaid boundaries the land hereby conveyed.

To have and to hold the same, together with all the rights and privileges, ways, ferries, uses, servitudes, tenements, and improvements thereto in any wise belonging or appertaining, unto them, the
359 said Elisha Basse and Robert H. Hord, as tenants in common, their heirs and assigns, to their own proper use and behoof forever.

And we do hereby, for ourselves, our heirs, executors, and administrators, covenant with the said Elisha Basse and Robert H. Hord, their heirs and assigns, well and truly to warrant and forever defend the premises herein described against the persons claiming or to claim from, by, or under us or either of us.

In testimony whereof we have hereunto set our hands and affixed our seals (using scrawls for seals), at Brownsville, in the said State of Texas, on this fourteenth day of April, in the year of our Lord one thousand eight hundred and fifty-two.

RAFAEL GARCIA CAVAZOS. [L. S.]
MARIA JOSEFA CAVAZOS. [L. S.]

Signed, sealed, & delivered in the presence of—
ISRAEL B. BIGELOW & ANDREW G. PORTER.

THE STATE OF TEXAS,
County of Cameron:

Before me, Budd H. Fry, a notary public in and for the county and State aforesaid, this day personally appeared Rafael Garcia Cavazos, to me known as the person described in and who executed the foregoing deed of conveyance or instrument of writing, and who acknowledged the same as his own free act and deed, for the considerations and purposes therein set forth and expressed.

360 To certify which, witness my hand and seal of office, this 15th day of April, A. D. 1852.

[L. S.] BUDD H. FRY,
Notary Public.

THE STATE OF TEXAS,
County of Cameron:

Before me, Budd H. Fry, a notary public in and for the county and State aforesaid, duly commissioned and qualified, this day personally appeared Maria Josefa Cavazos, wife of Rafael Garcia Cavazos, parties to a certain deed or writing bearing date the 14th day of April, A. D. 1852, and hereto annexed, and having been by me examined prively and apart from her husband and having the same fully explained to her, she, the said Maria Josefa Cavazos, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and she wished not to retract it.

To certify which I hereto sign my name and affix my seal of office, at Brownsville, this 15th day of April, A. D. 1852.

[L. S.] BUDD H. FRY,
Notary Public.

THE STATE OF TEXAS,
County of Cameron:

I, Adolphus Glavecke, clerk of the district court in and for said county and State, do hereby certify that the foregoing is a true and cor-
361 rect copy of an instrument of record in my office, in book E, pages 283, 284, & 285, real estate records of Cameron County, Texas.

Witness my hand and the seal office, at office in the city of Brownsville, this 2nd day of April, A. D. 1875.

[L. S.] ADOLPHUS GLAVECKE,
Clk Dist. Court Cam. Co., Texas.

Statement of facts continued.—Patent for Esp. Santo Grant. (*D. S.*)

Patent from Texas to Garza's heirs. No. 968. Vol. 12.

In the name of the State of Texas. To all to whom these presents shall come:

Know ye I, H. R. Runnels, governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of

said State in such case made and provided, do by these presents grant to the heirs of José Salvador de la Garza, dec'd, their heirs or assigns forever, sixty-four leagues and five $\frac{647875}{1000000}$ labors of land, situated and described as follows:

In Cameron County, on the east bank of the Rio Grande, in front of the town of Matamoras, Mexico, and including the city of Brownsville, in said county, by virtue of an act to relinquish the right of the State to certain lands therein named, passed February 10th, 1852, being confirmation No. 42 for the county of Cameron.

362 Beginning on the left bank of the Rio Grande, 164-100 vrs. S. 21° 06′ E. from the S. E. corner of McKinney and Williams' large survey on the Olmos Creek, set post for S. W. corner of this survey, being the S. E corner of a grant known as San Pedro de Carricitas, whence an ash marked × bears N. 59° W. 520 vrs., a willow marked × bears N. 15° 15′ E. 390 varas.

Thence down with the meanders of the left bank of the Rio Grande to lower or S. E. corner, set a stake in old bed of the Rio Grande, whence a willow marked × bears N. 74° E. 75 varas; another marked × bears N. 73° E. 73 varas. Thence up with the meanders of the centre or middle of the old bed of the Rio Grande N. 73° 15′ W. 980 varas, N. 84° 30′ W. 320 varas, S. 89° 30′ W. 160 varas, N. 75° W. 100 varas, N. 52° W. 190 varas, N. 52° 15′ W. 410 varas, N. 34° W. 420 varas, N. 25° 45′ W. 816 varas, to intersection of E. boundary; N. 90 E. 75 varas, with said boundary to N. bank of Lake or Old River aforesaid, set a stake for S. E. corner, whence a mesquite marked × bears N. 80° E. 190 varas, a retama marked × bears N. 81 E. 190 varas. This corner stands 190 varas west of a slough or derramadero, which is believed to be the S.E. corner of this grant, as per titles.

Thence north 90° east with the east boundary of this survey at 1,000 varas entered prairie, at 1,627 varas passed a large ebony post, set by the authorities of the State of Tamaulipas in the survey of the

363 grant known as the San Martin. Said post is situated 300 varas, or 6 cordelados east of the tanque, supposed to be the same called for by titles of the Espiritu Santo, as a point on this boundary 11,480 varas to a salt laguna S. E. 640 varas wide; 14,100 varas to another salt laguna S. E. 530 varas wide; 21,690 varas to another salt laguna S. E. 750 varas wide; 23,500 varas to a road leading from Brownsville to Point Isabel; at 32,656 varas passed a point 6,210 varas east from the rancho San Juan del Retiro; 41,290 varas to a salt laguna known as Derremadero de los Brankitas, 2,240 varas wide east and west; 47,657 varas to a balsa or pocket of the Laguna Madre; set a large ebony post for the N. E. corner of this survey, in prairie, said post being marked × × ×.

Thence up with the meanders of Laguna Madre to the mouth of Arroyo Colorado. Thence up with the meanders of the right bank of said arroyo to the northwest corner of this grant, being the northeast corner of a grant known as Conception de Carricitas, set a stake, whence an ebony marked × bears S. 54° 45′ W. 16 varas; another ebony marked × bears S. 5° west 20 varas.

Thence S. 9° W. with the west boundary of this survey, being the east line of the survey aforesaid 11,610 varas to a resaca 50 varas wide; northeast and southwest 28,000 varas to another resaca 50 varas wide; 32,740 varas to Resaca de los Ajuntes 90 varas wide, east

364 and west; 33,930 varas to La Puerta; at 36,600 varas passed the Brownsville and Rio Grande City road; at 37,620 varas passed the rancho de San Vicente, 38,140 varas to the beginning.

Hereby relinquishing to them, the said heirs of Jose Salvador de la Garza, dec'd, and their heirs or assigns forever, all the right and title in and to said land, heretofore held and possessed by the said State, and I do hereby issue this letter patent for the same. In testimony whereof I have caused the seal of the State to be affixed, as well as the seal of the general land office.

Done at the city of Austin, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

H. R. RUNNELS,
Governor.

FRANCIS M. WHITE,
Commissioner of the G'l L'd Office.

GENERAL LAND OFFICE,
Austin, February 12th, 1875.

I, J. J. Groos, commissioner of the general land office of the State of Texas, hereby state that the foregoing is a true and correct copy from the record rep't in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office, the date last above written.

J. GROOS,
Commissioner.

365 *Statement of facts continued.—Elisha Basse to Stillman & Belden. Deed.* (*D.* 9.)

Deed from E. Basse to Stillman.

THE STATE OF TEXAS,
County of Cameron:

Know all men by these presents, that I, Elisha Basse, a resident of the said county and State, in consideration of the sum of eleven thousand dollars to me in hand paid by Charles Stillman and Samuel A. Belden, of the same residence, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Stillman and Belden all of my right, title, and interest in and to a certain tract of land, situated in the said State of Texas, and known as the site of the city of Brownsville and bounded as follows, to wit: beginning at the most northern point or angle of the fence known as the quartermaster's fence around Fort Brown—thence running due north to a line running five thousand varas, magnetic, north from the centre of the main plaza of the city of Matamoras, Republic of Mexico; thence and after reaching said line so drawn as aforesaid, running along said line westwardly to a point due north of the place where the line of a survey made for Charles Stillman, strikes the Rio Grande, which place is understood to be so situated that the line runs directly through a point where once was situated a warehouse built by John Young, in or near the town site of Mansfield; thence due south to the point above mentioned;
366 thence following the meanders of the Rio Grande down to the point where the western or upper line of the said quartermaster's fence strikes the said river; thence along the line of said fence to the place of beginning.

And I further convey to said Stillman and Belden my entire right, title and interest in and to certain locations and surveys and headright certificates and labor titles, acquired by R. H. Hord and by me, the said Basse, from the said Stillman and Belden, by deeds which are of record

in the county clerk's office of the county of Cameron aforesaid, one of which is dated December 14th, 1849, and recorded on the 17th day of December, 1849, in book A of real estate, pages 498 to 510 inclusive, and the two other deeds as aforesaid, dated each on the 31st day of January, 1850, and each recorded on the day aforesaid, one in book A, on pages 521 to 523 inclusive, and the other in book B of real estate on pages 319 and 320 inclusive, and to which deeds as aforesaid reference is herein made, for greater certainty and further description of the premises herein conveyed.

To have and to hold all and singular the said premises, with all of the rights and privileges, ways and ferries, uses servitudes, [*] tenements and improvements thereto in anywise belonging or appertaining unto the said Stillman and Belden, their heirs and assigns, forever.

It is however understood that the said Basse does not hereby
367 convey to said Stillman and Belden the ten acres of land near Freeport, and known as the Shannon place, but he expressly reserves the same from the operation of this deed.

In testimony whereof I have hereunto set my hand and seal, using a scrawl for seal, this the 26th day of May, A. D. eighteen hundred and sixty.

E. BASSE. [SEAL.]

Signed, sealed, & delivered in the presence of—
ISRAEL B. BIGELOW.
A. YZNAGA.

THE STATE OF TEXAS,
County of Cameron:

On this 25th day of September, A. D. 1862, personally came and appeared before me, the undersigned clerk, Israel B. Bigelow, to me known, who, being by me duly sworn, says that he signed the foregoing instrument of writing as a subscribing witness at the request of E. Basse, who at the time of signing acknowledged the execution of the said instrument, and same to be his own free act and deed, and executed by him, Basse, for the uses, purposes, and considerations therein specified.

Witness my hand and seal of office this 25th day of September, A. D. 1862.

[SEAL.] HENRY KLAHN,
Clerk County Court, Cameron County, Texas.

368 THE STATE OF TEXAS,
County of Cameron:

I, the undersigned clerk, do hereby certify that the foregoing instrument of writing was filed in my office for record on the 25th day of September, A. D. 1862, at 10 o'clock a. m., and was duly recorded† on the next day in book H of real estate, pages Nos. 313 and 314, of the records of said county.

Witness my hand and seal of office this the 26th day of September, A. D. 1862.

[SEAL.] HENRY KLAHN,
Clerk County Court, Cameron County, Texas.

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*The word "and" erased.
†The word "recorded" interlined.

Statement of facts continued. Copy. Rob't Hord to Mifflin Kenedy. Deed (D. 10.)

Deed from R. H. Hord to M. Kenedy.

THE STATE OF TEXAS,
County of Cameron:

Know all men by these presents, that I, Robert H. Hord, a resident of the county of Cameron, in the State of Texas, in consideration of the sum of eleven thousand dollars to me in hand paid by Mifflin Kenedy, of the same residence, have this day granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said Mifflin Kenedy, all my right, title, and interest, in and to a certain tract of land situated in the said county of Cameron, in said State of Texas, and known as the site of the city of Brownsville, and
369 bounded as follows, to wit:

Beginning at the most northern point or angle of the fence known as the quartermaster's fence around Fort Brown, thence run'ing due north to a line running five thousand varas magnetic north from the centre of the main plaza of the city of Matamoras, Republic of Mexico; thence, and after reaching said line so drawn as aforesaid, running along said line westwardly to a point due north of the place where the line of a survey made for Charles Stillman strikes the Rio Grande, which place is understood to be so situated that the line runs directly through a point where once was situated a warehouse built by John Young in or near the town site of Mansfield, thence due south to the point above mentioned, thence following the meanders of the Rio Grande down to the point where the western or upper line of the said quartermaster's fence strikes the said river, thence along the line of said fence to the place of beginning, except the upper half of lot number twelve (12) in block number fifty-six (56).

And I further convey to the said Mifflin Kenedy my entire right, title, and interest in and to certain locations and surveys and head-right certificates and labor titles, acquired by Elisha Basse and me, the said Robert H. Hord, from the said Charles Stillman and Samuel A.
370 Belden, by deeds which are of record in the county clerk's office of the county of Cameron aforesaid, one of which is dated December 14th, 1849, and recorded on the 17th day of December, 1849, in book A of real estate, pages 498 to 510 inclusive, and the two other deeds aforesaid dated each on the 31st day of January, 1850, and each recorded on the day aforesaid, one in book A, on pages 521 to 523, inclusive, and the other in book B, pages 319 and 320, inclusive, and to which deeds as aforesaid reference is herein made for greater certainty and further description of the premises herein conveyed:

To have and to hold all and singular the said premises, with all the rights and privileges, ways and ferries, uses, servitudes, tenements and improvements thereto in anywise belonging or appertaining, unto the said Mifflin Kenedy, his heirs and assigns, to his proper use and behoof forever.

In testimony whereof I have hereunto set my hand and seal (using scrawl for seal) this the 7th day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

R. H. HORD. [SEAL.]

Signed, sealed, and delivered in presence of—
JOSIAH MOORHEAD.
JOHN FELTER.

THE STATE OF TEXAS,
371 *County of Cameron:*

Before me, Budd H. Fry, clerk, of the county court in and for the county and State aforesaid, this day personally appeared Robert H. Hord, to me well known, and who stated to me that he executed the foregoing instrument of writing, and acknowledged the same to be his act and deed, for the use and purpose therein set forth and expressed.

In testimony whereof, I have hereunto set my hand, seal of office, this the 7th day of May, A. D. 1858.

[L. S.] BUDD H. FRY.
Clerk County Court, Cameron County, Texas.

THE STATE OF TEXAS,
County of Cameron:

I hereby certify that the foregoing instrument of writing was filed for record in my office on the 10th day of February, A. D. 1859, at 9 o'clock, p. m., and was duly recorded Feb. 19th, A. D. 1859, in book G, of real estate, pages 472 & 473.

Witness my hand and seal of office, this the 19th day of February, A. D. 1859.

[L. S.] JEFFERSON BARTHELOW.
Clerk Co. C't, Cameron Co., Texas.
By F. F. FENN, *Dep'ty.*

Statement of facts continued. Mifflin Kenedy to Charles Stillman and Sam'l A. Belden. Deed of Release. (*D.* 11.)

Deed from M. Kenedy to Stillman & Belden.

372 Know all men by these presents, that I, Mifflin Kenedy, of the county of Cameron, and State of Texas, for and in consideration of a valuable consideration to me in hand paid by Charles Stillman and Samuel H. Belden, both of said county and State, the receipt whereof is hereby acknowledged, have granted, bargained, and sold and released, and do by these presents, grant, bargain, and sell and release unto the said Charles Stillman and Samuel A. Belden, all the right, title, and interest, which I acquired in and to the following described tract of land, by and through a certain deed of conveyance and release, executed to me by Robert H. Hord, on the seventh day of May, in the year eighteen hundred and fifty-eight, and recorded in said county in book G, pages 472 and 473, to which reference is made for greater certainty, the said tract of land being bounded and described as follows, to wit:

Beginning at the most northern point or angle of the fence known as the quartermaster's fence around Fort Brown; thence running due north to a line running five thousand varas, magnetic north from the centre of the main plaza of the city of Matamoras, Republic of Mexico; thence and after reaching said line so drawn as aforesaid, running along said line northwardly to a point due north of the place where the line of survey made for Charles Stillman strikes the Rio Grande, which place* is understood to be so situated that the line runs directly through a point where once was situated a warehouse built by John
373 Young, in or near the town site of Mansfield; thence due south to the point above mentioned; thence following the meanders of

*The word "place" interlined.

the Rio Grande down to the point where the western or upper line of said quartermaster's fence strikes the said river; thence along the line of said fence to the point of beginning, except the upper half of lot number twelve, in block number fifty-six, in the town of Brownsville, and except, also, all such right, title and interest as I may have acquired by other deeds to particular lots in said town.

And I further grant, bargain, and sell and release to the said Stillman and Belden, all the right, title, and interest acquired by me, by or through the above recited deed from said Hord, in and to certain surveys and certificates and labor titles, acquired by said Hord and Elisha Basse from the said Stillman and Belden, by deeds, one dated December 14th, 1849, and recorded on the 17th day of December, 1849, in book A, pages 498 to 502, of the real estate records of said county; and two others [deeds]* dated each on the 31st of January, 1850, and recorded in book A, pages 521 to 523 inclusive, and book B, pages 319 and 320 inclusive, respectively; to which deeds is hereby reference made for greater certainty.

To have and to hold all and singular the said premises and the rights, appurtenances, and incidents thereto belonging to them the said Charles Stillman and Samuel A. Belden in the proportion of five-sixths of the whole interest now vested in me, to the said Stillman, and one-
374 sixth of the said interest to the said Belden, as tenants in common, and to their heirs and assigns in like proportion forever.

In testimony whereof I have hereunto set my hand and affixed my seal (using scrawl for seal) this twenty-ninth day of October, A. D. 1862.

M. KENEDY. [SEAL.]

Witnesses:
M. W. NELSON.
F. M. CAMPBELL.

THE STATE OF TEXAS,
County of Cameron:

On this 29th day of October, A. D. 1862, personally came and appeared before me, the undersigned clerk, Mifflin Kenedy, to me known as the person described in and who executed the foregoing instrument of writing, and acknowledged to me that he executed the same freely as his own act and deed, for the uses, purposes, and considerations therein set forth and specified.

Witness my hand and seal of office this the 29th day of October, A. D. 1862.

HENRY KLAHN,
Clerk County Court Cameron Co., Texas.

THE STATE OF TEXAS,
County of Cameron:

I, the undersigned clerk, do hereby certify that the foregoing instrument of writing was filed in my office for record on the 29th
375 day of October, A. D. 1862, at 10 o'clock a. m., and was duly recorded on the same day in book H of real estate, pages Nos. 315 & 16 of the records of said county.

Witness my hand and seal of office this the 29th day of October, A. D. 1862.

[L. S.]

HENRY KLAHN,
Clerk County Court Cameron County, Texas.

* The word "deed" erased.

Statement of facts continued.—Copy from records. Deed. Charles Stillman to Wm. G. Hale. Sept. 1st, 1866. (D. 12.)

Deed from Charles Stillman to W. G. Hale.

Know all men by these presents that I, Charles Stillman, now of the city and State of New York, for and in consideration of the sum of one dollar to me in hand paid by William G. Hale, now of the city of New Orleans, in the State of Louisiana, the receipt whereof is hereby acknowledged, have granted, bargained, & sold and conveyed, and do hereby grant, bargain and sell, convey to the said William G. Hale, one undivided third part (being one moiety of my present interest) of the town tract of Brownsville and the adjacent lands, situate in the county of Cameron, and State of Texas, being the same as was conveyed to me and to my co-proprietor, Samuel A. Belden, by the several deeds of release and conveyance made by Elisha Basse, Robert H. Hord, and Mifflin Kenedy, to which deeds and also to those under which said grantors derived title, reference is now made for greater certainty of description.

376 To have and to hold the premises hereby conveyed, together with one-third interest in the uses, services, and appurtenances belonging to said property, including the right of ferriage and wharfage, to him, the said William G. Hale, his heirs and assigns forever.

In testimony whereof I have hereunto set my hand and seal, using scrawl for seal, this first day of September, A. D. eighteen hundred and sixty-six.

CHAS. STILLMAN. [SEAL.]

Witnesses:
THOS. SADLER.
PETER DECKER.

STATE OF NEW YORK,
City and County of New York, ss:

I, Thos. Sadler, commissioner in said State, appointed by the governor of the State of Texas to administer oaths and affirmations, and to take acknowledgements and proof of deeds, &c., to be used or recorded in the said State of Texas, do hereby certify that Charles Stillman* this day personally came before me, and acknowledged that he signed, sealed, and delivered the foregoing instrument of writing, bearing date the first day of September, A. D. eighteen hundred and sixty-six, as his voluntary act and deed, for the considerations, uses, and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city of New York, the twenty-
377 eighth day of December, in the year one thousand eight hundred and sixty-six.

[L. S.]

THOS. SADLER,
Commissioner for Texas, 11 Wall street, New York.

[$1.00 int. rev. stamps cancelled. S. A. B. Dec. 28th, A. D. 1866.]

Filed for record at one p. m., Feb'y 7th, A. D. 1867, and recorded Feb'y 8th, A. D. 1867.

WILLIAM W. DAVIS,
Deputy Clerk Co. Court, Cam. Co., Texas.

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* The word "Charles Stillman" interlined here by me.
NOAH COX, *Deputy Clerk.*

STATE OF TEXAS,
County of Cameron :

I, Adolphus Glaevecke, clerk of the district court of said county and State, hereby certify the foregoing to be a true copy from the records of the said county of Cameron as the same appears in book A, pages 346 and 347, supplemental records of said county.

(Word "Charles Stillman" interlined before signing.)

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in the city of Brownsville, this 24th day March, A. D. 1875.

[L. S.]

ADOLPHUS GLAEVECKE,
Clk Dist. Crt Cam. Co., Texas,
By NOAH COX, *Deputy.*

Statement of facts continued.—Deed of dedication from Basse & Hord to Brownsville. (D. 13.)

Deed of dedication to city of Brownsville.

THE STATE OF TEXAS,
County of Cameron :

378 Know all men by these presents, that we, Elisha Basse and Robert H. Hord, of the county of Cameron, in the aforesaid State of Texas, do, by these presents, give, grant, and dedicate, unto the city of Brownsville in the aforesaid county, and State aforesaid, the use of all that piece, parcel or *or* tract of land situate in the said city of Brownsville, in the aforesaid county and State, and marked and described on the within map of said city as Washington square, the meet's and bounds of which will fully appear by reference to the within map, being bounded on the northeast by Madison street, on the southwest by Adams street, on the southeast by Ninth street, and on the northwest by Seventh street; to have and to held the same for the use, pleasure, and enjoyment of the citizens of said town or city as a promenade or pleasure ground.

And we further grant, donate, and dedicate unto the said city of Brownsville the use and easement of all of the several tracts, parcels or pieces of land designated and described, and marked on the within map as Jackson, Monroe, Madison, Jefferson, Adams, Washington, Elizabeth, & Levee streets, and the three streets lying between Levee street and the Rio Grande and laid off parallel with said Levee street and known as St. Charles, St. Francis, and Trenton streets, as laid down on the within map by the marks and lines of each street respectively, and Sixteenth, Fifteenth, Fourteenth, Thirteenth, Twelfth, Eleventh,

379 Tenth, Ninth, Eighth, Seventh, and Sixth streets, which are situate and lie within the limits and boundaries presently described, to wit: at the southwest corner of block No. 60, being an acute angle formed by Fourteenth street as aforesaid and the line on the within map marked as "U. S.," line running thence with said "U. S." line N. 66° E. to a point where the southwestern line of Jackson street as aforesaid strike' the same; thence N. 44° W. with the aforesaid southwestern line of Jackson street to the western corner of the block marked on the within map No. 139; thence S. 46° W. with the southeastern side of Sixth street to the southwestern corner of block, marked on the within map as block N. 33°; thence S. 44° E. with the northeast side of a street known as St. Francis street to the southern corner of a block marked on the within map as block No. 35; thence N. 46° E. with

the northwest side of Ninth streets to the east corner of said last named block; then S. 44° E. with the southwest side of St. Charles street 380 feet; thence N. 46° E. with the southeast side of 10th street to the corner of a block known as block N. T.; thence S. 44° E. with the southwest side of Levee street 1,410 feet; thence N. 46° E. 60 feet to the place of beginning. And the said described pieces, parce's, or tracts of land are intended to embrace strictly the streets situate within the before described limits of the town or city of Brownsville, and no other lands whatsoever, and the said boundaries are hereby declared to embrace all of the land which we desire to be included in the town tract as lots:

380 To have and to hold the same as easements for such purposes as is usual and customary for streets to be used for, and for no other purposes whatsoever; we hereby reserving to ourselves, *the* in all and each of the same and every part thereof, the fee, with all the privileges, hereditaments, remainders, and reversions not herein granted. And we further declare and publish hereby that all the land lying and situate between the aforesaid Levee street and the said river Rio Grande and all other the streets hereinbefore named unto the thread of the stream aforesaid, are hereby expressly forever reserved unto ourselves, together with all and every easement, privilege, right, hereditament, alluvion, accretion, and ferry privilege, for our own proper use and behoof, that is or are incident or belonging to a real fee-simple interest in lands.

As witness our hands and seals, using scrawls for seals, this the eleventh day of December, one thousand eight hundred and fifty.

ELISHA BASSE. [SCRAWL.]
ROBERT H. HORD. [SCRAWL.]

Signed, sealed, and delivered in presence of—
F. J. PARKER.
LEWIS A. BRYAN.
ROBERT O. TANDY.

THE STATE OF TEXAS,
County of Cameron:

Before me, clerk of the county court, in and for the county and State aforesaid, personally appeared Elisha Basse and Robert H. Hord, to me well known, who stated that they had executed the foregoing

381 instrument or map, and acknowledged the same to be their act and deed, for the considerations and purposes therein stated. To certify which—

Witness my hand and seal of office this 11th day of December, A. D. 1850.

F. W. LATHAM,
Clk C. C. C. C.,
By B. H. FRY, *Dep't.*

Filed for record December the 11th, A. D. 1850, at 8 o'clock p. m., and recorded December the 13th, A. D. 1850.

F. W. LATHAM,
Clk C. C. C. C.,
By B. H. FRY, *Dep'ty.*

THE STATE OF TEXAS,
County of Cameron:

I, Budd H. Fry, clerk of the county court in and for the county and

State aforesaid, do hereby certify that the foregoing is a true and correct copy taken from book "D" of the records of said county, pages 181, 182, 183, 184, and 185.

In testimony whereof I have hereunto set my hand and seal of office, at my office in the city of Brownsville, in said county and State, this the 22nd day of the month of May, A. D. 1857.

[SEAL.] BUDD H. FRY,
Clerk County Court Cameron County, Texas.

No. 317. In dist. court, Nueces Co. Filed June 2d, 1857.
THOMAS E. HOOPER,
Clerk D. C. N. Co.

Filed July 1st, 1857.
GEO. W. WOODMAN,
Clerk D. C. C. C.

382 *Statement of facts continued.—Extracts from records of common council of Brownsville.* (*D.* 14.)

Extract from city records. Special meeting Aug. 5, 1867.

* * * * * * *

His honor stated that the council was called for the purpose of considering the question of rights of private property-holders to build upon public highways.

Motion of Alderman Kenedy:

That Stephen Powers, esq., be retained as attorney by this city to defend the rights of the city to the dedicated use of the public highways and especially the market square.

Carried.

* * * * * * *

(S'gned) WM. NEALE, *Mayor.*
(S'gned) E. P. CLANDON, *City Sec't'y.*

A true extract from city records.
[L. S.] L. COWEN, *City Sec't'y.*

Statements of facts continued.—Ferry license. (*D.* 15.)

And further the defendants introduced and read in evidence ferry licenses granted to the defendants Stillman & Hale and their grantors by the county court to run ferries across the Rio Grande to Mexico, within the lands in question in this suit, for the years 1850, 1852, 1857, 1863, 1868, 1869, 1870, 1871, 1872, and 1873; one of which licenses is now here inserted, the others being to the same purport.

THE STATE OF TEXAS,
County of Cameron:

383 In the name of the State of Texas, to E. Basse & Robert H. Hord and to all to whom these presents shall come, greeting:

Know ye that whereas the privilege of keeping a public ferry across the Rio Grande opposite the city of Brownsville in said county has been granted to E. Basse & Robert H. Hord until the next regular term of the county court of said county by the chief justice thereof, and the said Basse & Hord having given bond and paid the tax required by law: Now, therefore I, H. L. Grinsted, chief justice of said county, by

virtue of the authority vested in me by law, do hereby authorize and empower the said E. Basse & Robert H. Hord to keep a public ferry across the Rio Grande opposite the city of Brownsville until the next regular term of the county court in and for said county, and to charge and receive such rates of toll or ferriage as are now charged and received at said ferry and heretofore established by order of said county court.

Given under my hand this 21st Dec., A. D. 1850.

[SEAL.] H. L. GRINSTED,
Chief Justice of Cameron County.

Attest:

F. W. LATHAN,
Clk C. C. Co.
By BUDD FRY, *Dep'y.*

Statement of facts continued.—1869 *city tax. Ferry a/c Dec. 13th*, 1869. *Entered Oct. 5.* (*D.* 16.)

And also the defendants, Stillman & Hale, introduced and read in evidence tax receipts from tax collectors showing payment by them or their grantors of city, county, State, and internal-revenue taxes from 1867 to 1873; one of which licenses is here now inserted, the others being to the same purport.

384 [No. 52.] ASSESSOR & COLLECTOR'S OFFICE,
City of Brownsville, Texas, Dec'b'r 13th, 1869.

Received of Antonio Ysnaga for Belden, S. & H., one hundred & forty-three dollars and 44 cents in full of his city tax for 1869 to 186 .
143\frac{44}{100}$.

ROB'T B. KINGSBURY,
Assessor and Collector.

Statement of facts continued.—Reasons for suppression given by plaintiff of all the depositions produced by defendants. Filed May 25, '76.

And the defendants also offered to read in evidence the depositions of F. J. Parker, F. Yturria, Henry Klahn, H. M. Field, and Antonio Yznaga, to which the plaintiff objected because of the reasons expressed in his motion to suppress the said depositions filed, and due notice of such filing given to the defendants one day before the trial of this cause, as follows:

And now comes the plaintiff herein and excepting to the manner of taking and form of returning the depositions of F. J. Parker, Henry Klahn, Francisco Yturria, Henry M. Field, Antonio Yznaga, Mariano Trevino Garza, and L. J. R. Bellefeuille, witnesses for the defendants in the above-entitled cause, moves the court that the said depositions be ruled out and suppressed and altogether held for nothing, for the following reasons:

1. The pretended officer before whom the said depositions are alleged to have been taken has appended and made no certificate whatever of his action in the matter of taking the same.

2. The said pretended officer does not allege that he was at the time of taking such depositions duly qualified according to law as such officer.

385 3. The said pretended officer does not certify that the said witnesses swore to their purported depositions respectively before him.

4. The said pretended officer does not certify that the said witnesses were sworn by him, nor that they were duly sworn by him.

5. The said pretended officer does not certify that the said witnesses signed their purported depositions respectively before him.

6. Because it is not true that the pretended officer taking said purported depositions was a commissioner appointed by mutual consent of the parties in this cause to examine said witnesses.

7. As to the deposition of Mariano Trevino Garza, for the additional reason that it appears from the said deposition that the same was taken through an interpreter, and the answers of said witness, in his original or native tongue, the Spanish language, are not given or taken down.

8. The deposition of the witness F. J. Parker should be suppressed for the additional reason that he has failed to answer the plaintiff's second, fourth, seventh, eighth, sixteenth, eighteenth, nineteenth, and twentieth cross-interrogatories.

9. The deposition of the witness Henry Klahn should be suppressed for the additional reason that he has failed to answer plaintiff's second, fourth, seventh, eighth, & fifteenth cross-interrogatories.

10. The deposition of the witness Francisco Yturria should be suppressed for the additional reason that he has failed to an-
386 swer plaintiff's second, third, seventh, thirteenth, fifteenth, and twenty-first cross-interrogatories.

11. The deposition of the witness H. M. Field should be suppressed for the additional reason that he has failed to answer plaintiff's seventh, eighth, eleventh, twelfth, thirteenth, fourteenth, and twenty-first cross-interrogatories.

12. The deposition of the witness Antonio Yznaga should be suppressed for the additional reason that he has failed to answer plaintiff's fourth, thirteenth, and twenty-first cross-interrogatories.

13. The deposition of Mariano Trevino Garza should be suppressed for the still additional reason that he fails to answer plaintiff's second, third, fourth, fifth, sixth, seventh, eighth, tenth, thirteenth, and fourteenth cross-interrogatories.

And the court overruled the objection of plaintiff to the admission of said depositions, to which ruling of the court the plaintiff then and there excepted, and the said depositions were thereupon read in evidence by defendants, as follows:

387 *Interrogatories propounded to F. J. Parker, Henry Klahn, Francisco Yturria.*

In the U. S. circuit court for the eastern district of Texas. At Galveston; transferred from Brownsville.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS, CHARLES STILLMAN, WILLIAM G. HALE. } No. 202.

Interrogatories propounded to the witnesses, F. J. Parker, Henry Klahn, Francisco Yturria, who are residents of Cameron County, Texas, and whose answers, when taken, will be read in evidence by the defendants on the trial of the above-entitled cause, under agreement of counsel herein.

The witnesses F. J. Parker, Henry Klahn, & Francisco Yturria only were examined, the other witnesses not appearing.

Interrogatory 1st. What is your name, age, residence, occupation or profession?

2nd. Do you know the land comprised within what is known as the Espiritu Santo Grant as patented? and, if so, please state where the said land lies, whether on the right or left bank of the Rio Grande River.

3rd. Is the city of Brownsville and the garrison grounds at Fort Brown included in the said Espiritu Santo grant of lands; and, if yea, which particular portion of the said Espiritu Santo lands includes the said city of Brownsville, and the said garrison grounds?

4th. If you answer that the middle portion of the said Espiritu Santo lands include the city of Brownsville and the said garrison grounds, please state how far above, and how far below, the said city and the said garrison grounds the said middle portion of the said Espiritu
388 Santo lands extend; also, how far north, south, east, and west from the said city.

5th. Do you know the owner or owners of the said lands constituting the said middle portion of the said Espiritu Santo Grant? If so, state who they are and how long they have had possession of the same.

6th. Do you know who constituted the Brownsville Land Company? and, if yea, state who they were, and what lands were held by them.

7th. If you answer to the next preceeding interrogatory that the Brownsville Land Company held the middle portion of the lands embraced within the Espiritu Santo grant, including the said city of Brownsville and the garrison at Fort Brown, state how long the said land company have had possession of the said lands, who have paid the taxes on the same, and for what length of time they have so paid the taxes. State also to whom the city lots and other landed portions of the city of Brownsville were assessed for taxes, and for what particular years.

8th. Have you held any office in Cameron County, or in the city of Brownsville? and, if so, state what office and for what years.

9th. If in answer to the next preceeding interrogatory you state that you have held the office of assessor and collector of city taxes, state how long you held such office, and for what particular years; to whom were the city lots and other landed portions of the city of Brownsville assessed during those years, and who paid taxes on the same.

389 10th. If you answer that you have at any time held the office of county assessor and collector of taxes, state for what years, and who paid taxes on the city lots and other landed portions of the city of Brownsville for such years.

11th. Who constituted the Brownsville Land Company; how long have you known the members of the said company; where do they reside, if living; and, if dead, where did they die? giving their names.

12th. What were the lands of which the said Brownsville Land Company were possessed? Describe the same as fully and clearly as possible.

13th. If you answer that the Brownsville Land Company were possessed of the city lots and other landed portions of the city of Brownsville, state how long said company held such possession, since what year, and up to what time.

14th. Who was in possession of these Brownsville lands when you first knew them, and how long have said lands been so held?

15th. Did the city of Brownsville ever exercise any acts of ownership over the said Brownsville lands; and, if so, when, and what were the acts of ownership so exercised by the said city of Brownsville?

16th. Did the city of Brownsville ever donate any portion of said lands for any specific purpose; and, if so, for what purpose?

390 17th. Has the city of Brownsville ever demanded possession of the garrison grounds at Fort Brown from the Government of the United States of America, or claimed payment of rents, or demanded the purchase of the same?

18th. Who has had possession of the said garrison grounds since you knew it? and if you answer, the Government of the U. S., by its army, state how long, and by what sort of authority, whether by verbal or written agreement, and with whom such agreement was made.

19th. What private parties assumed the control and protection of Levee street, in the said city of Brownsville, and by whom were the expenditures made for the protection of that street, and did the city of Brownsville ever deny the right of such parties to control and protect said street, and to make such expenditures, and did the said city ever interfere in any way with such control and protection?

20th. Who has had possession of the levee, since you knew it; who has assumed and exercised control over the same, and for what purpose? State fully and distinctly. Also, all you know in regard to the use, possession, and occupation of the ferries at Brownsville, and by whom.

21. Do you know, or have you ever heard of, any person paying taxes to the city, county, or state, for the lands embraced within the Brownsville Land Company's tract, which had not been previously

391 sold by Messrs. Stillman and Belden, Basse and Hord, or Stillman, Belden and Hale, or Stillman and Hale, or by some one of the above-mentioned names? If so, state the name of such person, and the circumstances attending such payment; when, where, and how, and to whom it was made.

22nd. State fully and distinctly any and all other matters you may know in regard to the questions at issue between the parties to this suit which may be of benefit or advantage to the defendants.

W. G. HALE, J. R. COX, & B. B. SEAT,
For Defendants.

Service was had on us of the foregoing interrogatories, by handing us the same for the purpose of propounding cross-interrogatories, the 20th of May, 1875.

POWERS & MAXAN,
Att'ys for Pl't'fs.

(Endorsement:) No. 202. The City of Brownsville vs. Maria Josefa Cavazos, Charles Stillman, & others. Interrogatories to Edward Downey, F. J. Parker, Henry Klahn, Daniel Wolf, Francisco Yturria. Ser'd on Nestor Maxan, pl't'fs' att'y, May 20th, 1875.

392 *Cross-interrogatories propounded to Edward Downey, F. J. Parker, Henry Klahn, Daniel Wolf, & Francisco Yturria.*

In U. S. circuit court, eastern district of Texas, at Galveston, transferred from Brownsville.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

The plaintiff herein, reserving all and every manner of exceptions to

the competency, legality, relevancy and admissibility of the interrogatories herein propounded to the witnesses, Edward Downey, F. J. Parker, Henry Klahn, Daniel Wolf, & Francisco Yturria, as well as to the manner of taking and returning their answers thereto, now propounds the following cross-interrogatories to the said witnesses:

Cross-int. 1st. If you shall have answered to the second direct interrogatory in the affirmative, state how you know each of the facts inquired of. Do you know that the said Espiritu Santo grant is patented, and to what extent? When and how have you learned these facts? Give details of time and circumstance, as the same occurred.

Cross-int. 2nd. If you shall have answered to the third direct interrogatory that the city of Brownsville and the garrison grounds at Fort Brown are comprised within the middle portion of the Espiritu Santo grant, state whether you do not mean that they are included within the original bounds of that grant, as the latter stood before the destination of ejidos for Matamoras, commencing about 1826 or 1827. If you mean otherwise, declare your meaning fully, and state how you derive your conclusions.

393 Cross-int. 3rd. If you shall state, in answering the fourth direct interrogatory, how far above and below, and north, south, east and west from the city of Brownsville and garrison grounds of Fort Brown the middle portion of the Espiritu Santo grant extends, please state your means of information, and whether, when you refer to the city of Brownsville herein, you do not mean the body of the town and not the town tract of said city?

Cross-int. 4th. Do you know the locality, at the place formerly called Mansfield, known as John Young's warehouse; and, if yea, how far westerly above the latter does the town tract of the city of Brownsville extend? Is not such intermediate space on the river-front occupied by laborholders? and, if yea, name them, and state from whom they derived their tenures or holdings.

Cross-int. 5th. How far below or easterly from the most northern point or angle of the fence, known as the quartermaster's fence, around Fort Brown does the said town tract of Brownsville extend, and is not such intermediate space occupied on the river-front by laborholders? and, if yea, name them, and state from whom they derived their tenure or holdings.

Cross-int. 6th. In answering the fifth direct interrogatory, state particularly all your means of information.

Cross int. 7th. State what ranches, labors, and localities on the river-front are notoriously within the said middle portion of the Espiritu Santo grant, by whom held and occupied, from whom have those so holding and occupying the said labors, ranches, and localities derived their possessions, and since when have they and their predecessors under such tenure so held such possessions, and have not such holders paid the taxes thereon? As to any point within the town tract of Brownsville, have you known the defendant Maria Josefa Cavazos to hold or possess any part or portion of the said middle portion of the Espiritu Santo grant? and, if yea, state specifically what particular portion, and at what times, and during what periods has she held or possessed the same up to the present time, and by what acts of hers has such possession, if any, been shown.

394

Cross int. 8th. If in answer to the twelfth interrogatory you shall speak of possession, please state in what sense you use such term as regards the lands in question, and to what limits. Please give your par-

ticular definition of the term possession as applied to the lands in question.

Cross-int. 9th. Do you know the quantity of land embraced in the middle portion of the Espiritu Santo grant, the quantity comprised in the town tract of the city of Brownsville, and that embraced in the claim of the defendants Stillman and Hale; and, if yea, state what those quantities are respectively. Is not the town tract of the city of Brownsville much larger than the claim of Stillman & Hale?

Cross-int. 10th. If in answer to the direct interrogatories, as to who paid taxes on the city lots and other landed portions of the city of
395 Brownsville, please state whether the laborholders previously mentioned within the town tract of the city of Brownsville have not paid taxes on their labors.

Cross-int. 11th. If you have answered anything of substance to the 14th, 15th, and 16th direct interrogatories, do you pretend to say that you give the names of all the persons who occupy lots and other landed portions of the city of Brownsville, and how they hold the same? Can you say that the said Brownsville Land Company themselves as such have ever had a single lot fenced in or enclosed upon which they paid taxes which was not the property of some person who had purchased? If yea, particularize such lot or lots by numbers of blocks and lots, and state specifically how long such enclosure has been made. Is it not a fact that there are no city lots or other lands within the town tract of the city of Brownsville fenced in or enclosed by the said Brownsville Land Company? What is the nature and character of the outlying lands of the town tract of the city of Brownsville outside of the body of the town and away from the river-front? Is it not chapparal and prairie, and uninclosed, uncultivated, and nearly uninhabited? Has the said land company or any of the said defendants ever fenced in or enclosed the land or lands claimed by them respectively, or any portion thereof? and, if yea, particularize such enclosures, and state how, when, and where the same have been made and how long ago.

Cross int. 12. Where were the defendants, Cavazos, Stillman and Hale, say from November, 1863, to about the middle of 1866.
396 Who had charge of the lands involved in this suit during said time, and of the ferry or ferries across the Rio Grande at Brownsville? Did not the Freedmen's Bureau have possession and charge of said lands and ferry or ferries, and did it not take possession of the same during said time? If not, who did? Did the said defendants, or either of them, or any one for them, have charge or possession of the said lands continuously during said time? If in answering the defendants' direct interrogatories you shall state anything of substance regarding the pretended possession of said lands by the said land company or the defendant Cavazos, state now whether you embrace in your answer or answers thereto the period of time between the dates above mentioned.

Cross-int. 13. Do you know the market house of the city of Brownsville, and since when? Who built it? On what land? Who established the plaza or square around it? Who has been in possession thereof since the construction of said market-house and the establishment of the said plaza or square? Who claims the same as owner, and collects the income arising from it, and since when, and to what use has it been and is it applied? Does not the city of Brownsville claim to be the owner of the said market-house, and the land it is built upon, together with the plaza or square around it, under its grant from the State of Texas? If nay, how otherwise? Has not the city of Brownsville notoriously claimed the ownership of its town tract since the time

397 of its grant from the State? Has it not defended and prosecuted suits at law, in assertion and defence of its claim to the title to said lands? Did not the city of Brownsville enjoy the ferries across the Rio Grande, within its town tract, under its ownership thereof, on the 24th of January, 1850, and previously thereto? Did not the city of Brownsville use a block of ground, some seven tiers of blocks from the river, as a public burying ground, and was there any other used for several years, and up to what time were burials made in the same? Has not the city of Brownsville had the control of the general repairing, grading, draining, and management of the streets since they were first laid out?

Cross-int. 14th. If you shall state anything of substance in answer to the 17th and 18th direct interrogatories about the nature of the government's authority to occupy the said garrison grounds, state how you know the same, whether from actual knowledge or hearsay. Did not the city of Brownsville on several occasions set up its ownership to the said garrison grounds before the Government of the United States and protest against the payment of any moneys for rent or otherwise accruing from said lands to any one else but itself, as the owner thereof? Did or not the said city of Brownsville join as a party in the proceeding for the appraisal and condemnation of the said garrison grounds in the district court of Cameron County about the year 185 , and in this hon. court at Brownsville in 1873, in the proceedings for the appraisal and condemnation of the island within the said garrison grounds

398 on which the national cemetary is now established? Has the Government of the United States ever paid rent for the occupation of said garrison grounds? If nay, why?

Cross-int. 15. During the time enquired of in the 21st direct interrogatory, did or did not Ignatius E. Rocco, John Castaing, Patrick C. Shannon, William Patterson, Rosa Flores, and others pay taxes on lands, as labors, and on what respective quantities, within the tract enquired about in said direct interrogatory, against the claim of said Brownsville Land Company, and do not John Castaing and Rosa Flores hold their labors still within said tract adversely to said land company, and do they not pay taxes thereon up to the present time?

Cross-int. 16. How long have you known Levee street? Do you know when it was first laid out? Was it not laid out at the same time as the other streets of the city? Are not the terms "the Levee," and "Levee street," used to signify the same thing, and are they not one and the same? Has it not been a public thoroughfare for foot passengers and vehicles from the time it was laid out, the same as the other streets of the city?

Cross int. 17. Did not the city of Brownsville in 1850 cause a survey of its town tract to be made by George Lyon, and monuments or marks and posts to be placed along the lines and at the corners of the survey, and were not the field-notes of the said survey recorded in the county-court records in August, 1854?

399 Cross-int. 18. If in answer to any of the defendants' questions as to the use or possession of "the Levee," or "Levee street," in the said city of Brownsville, you shall say that the same was occupied by the Brownsville Levee Company, state specifically what sections or portions of said levee was occupied by said levee company, of what dimensions as to space, and between what periods, and down to what time. Declare fully.

Cross-int. 19. Did the said levee company at any time have more in use at any one time than a section of the said levee, and to what extent in

this respect? State fully, and also as to vacant space or spaces unoccupied of said levee, at the different periods from the beginning of said levee company's occupation?

Cross-int. 20. Have the said levee company at all times kept their levee work in repair? Or if the same is or was ever at any time in disuse, when was it so at any time; and is it so now, and does or not the receiver collect Levee dues for its use? Is there any wharf attached to the said Levee street at the present time, and how long is it since there has been no wharf? Has the said levee company ever expropriated or purchased any land for the use of its franchise? State fully.

Cross-int. 21. Have not the works erected by the said levee company, from their inception, been entirely within Levee street of said city? Is not the work or causeway lately constructed by the receiver, leading to the present ferry landing at Brownsville, at the junction of 12th and Levee streets, and on and within 12th street, and its continuation down to the margin of the river, at the landing?

400 Cross-int. 22. (Separately to F. J. Parker.) Are you not the business partner of the defendant Wm. G. Hale? If so, for how long and at what business? Were you or not a member of the legislature of Texas that granted the said levee company's charter? Who first proposed said charter? Was it favored and proposed by the said Hale and his associates in interest in the lands in the contest in this suit? Did you not vote for and in favor of the said charter?

Cross-int. 23. (To Edward Downey separately.) When you were mayor of Brownsville, in the year 1869 (September), were you not appointed by the dist. court of Cameron County as one of the appraisers to appraise the island in the garrison grounds of Fort Brown, in a proceedings begun for the condemnation of said land in said court, by the United States, and did you notify the city counsel of Brownsville that such proceeding was pending? Did you not receive under date of Sept. 6th, '69, a letter from Nestor Maxan, one of the attorneys for the city, addressed to you officially, notifying you not to take any steps in said proceeding which might be in conflict with the title of the said city, as the same would be incompatible with your official duties as mayor aforesaid? If so, attach a copy of said letter to your answer. Who was the judge of the said court at said time? And what relation is or was he to you then?

Cross-int. 24. State any other fact or thing you may know concerning the matters herein which you may know of benefit to the plaintiff herein.

POWERS & MAXAN,
Att'ys for Pl'tf.

401 *Answers of T. J. Parker to interrogatory propounded.*

THE UNITED STATES OF AMERICA:

Eastern district of Texas, in the fifth circuit.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS AND OTHERS. } No. 202.

Suit pending in the United States circuit court, eastern district of Texas, at Galveston. Transferred from Brownsville.

Answers and depositions of F. J. Parker, a resident of Brownsville, Cameron County, to the accompanying original interrogatories and

cross-interrogatories propounded to him in the above-entitled cause, before William Kelley, duly appointed by the United States circuit court for the eastern district of Texas a United States commissioner, and duly qualified as such commissioner in accordance with law, and authorized to take depositions in the above cause in accordance with the stipulation entered into by the parties in said cause, acting by and through their respective attorneys therein, on file in said court.

And the said F. J. Parker, being by me duly examined, cautioned, and sworn according to law, deposes and says and answers as follows:

To the first interrogatory he answers:

1st. My name is F. J. Parker; age, 59 years; residence, Brownsville, Texas; occupation, clerk of the U. S. courts at Brownsville.

To the second interrogatory he answers:

2nd. I do know the lands enquired about; they lie on the left bank of the Rio Grande in Cameron County, Texas.

402 To the third interrogatory he answers:

3rd. The city of Brownsville and the garrison grounds of Fort Brown are included in the said E-spiritu Santo grant of lands in that portion of the same belonging to Maria Josefa Cavazos. I should call it the middle portion of said grant.

To the fourth interrogatory he answers:

4th. The said middle portion of the said grant extends below the city and garrison grounds. I do not know how far, but I should say a mile or more at least. The upper line does not extend beyond the city limits.

To the the fifth interrogatory he answers:

5th. Maria Josefa Cavazos is the reputed owner of said middle portion of said grant. I know of no other owners to any portion of the same, except the said Brownsville Land Company, the United States (of the cemetary grounds), and the lot holders, who have derived title from said land company. There are other occupants, but I do not know that they are owners. The said middle portion of said grant has belonged to her less the portions above specified, since I first knew it, in the year eighteen hundred and forty-eight.

To the sixth interrogatory he answers:

6th. The said land company originally consisted of Charles Stillman, Samuel A. Belden, and, as was commonly supposed in the year 1848, of Jacob Mussina, represented by his brother, Simon Mussina, afterwards of Elisha Basse and Robert H. Hord, afterwards of Mifflin Kennedy, afterwards of said Stillman and Belden, to whom Wm. G. Hale was subsequently added as one of said company. This is the succes-

403 sion as nearly as I can recollect. The said company held such part of said middle portion of said grant of land as comprises the surveyed and settled portion of the city of Brownsville, and perhaps a portion which has not been surveyed, and the garrison grounds; but I do not know by what tenure they held or claimed to hold the latter. The said lands comprising said city, as described aforesaid, except such portions as sold by them, were held by said land company since said year 1848 by actual possession, as I understand such holding of lands in Texas.

To the seventh interrogatory he answers:

7th. The said land company have held possession of the said lands described in my answer to the sixth interrogatory to my knowledge since about the beginning of the said year (1848). It was about that time that the first house was erected in Brownsville. The lands of said garrison, except for a short period in 1859, when the post was

evacuated, and subsequently during the late war, has been in actual possession of the forces of the United States since 1848. I do not know what possession said land company has or had of said garrison grounds since the date last aforesaid, but I know they have always claimed some right of possession and ownership in the same. I do not know of my own knowledge who paid taxes on the said property.

To the eig'th direct interrogatory he answers:

8th. I have never held any county office. I am at present mayor of the city of Brownsville.

In answer to the ninth interrogatory he says:

9th. I do not know.

In answer to the tenth interrogatory he says:

I do not know.

In answer to the eleventh interrogatory he says:

404 11th. I have stated in my answer to the sixth interrogatory who they were. Stillman and Kennedy I have known since the year 1846; Belden since the beginning of the year 1848; Basse and Hord since 1849, and Hale about the same time. Jacob Mussina I never saw. Stillman now resides in New York; Belden died there; Hord died in Mississippi; Hale lives in New Orleans; Kennedy in Nueces County, Texas, and Basse in Denver City, Colorado. I think Mussina is dead; if so, I do not know where he died.

In answer to the 12th interrogatory he says:

12th. I stated in my said sixth answer what the lands possessed by said company are. They lie on the left bank of the Rio Grande, opposite the city of Matamoras, Mexico, with only the river separating the lands of that city from the lands in question. The lands of the garrison adjoin the city of Brownsville on the southeastern side, and contain about 600 acres, as I have heard. This portion was also claimed to be owned by said company.

In answer to the 13th interrogatory he says:

13th. The said land company were possessed of the city of Brownsville lots, except such as sold by them, under all the surveys made by them, and of the other portions of said city unsurveyed, but claimed by them to my knowledge since about the beginning of the said year 1848, which possession has been continued by them, except by the lapse occasioned by the war and by the appointment of a receiver, until the present time.

In answer to the 14th interrogatory he says:

14th. The Brownsville Land Company, as constituted and set forth in my answer to the sixth interrogatory, since said year 1848, ex-
405 cept as to portions sold by them, and the interruptions mentioned in my last answer, until the present time.

In answer to the 15th interrogatory he says:

15th. None to my knowledge. The city has exercised control only as to streets and alleys under municipal regulations to the best of my knowledge. I think she granted the alleys through one of the blocks to the convent and another to the college; I am not certain as to the last. Lately she has been giving quitclaim deeds to all lots deeded to purchasers by any of the parties claiming adversely to the city.

In answer to the 16th interrogatory he says:

16th. None that I know of. I know of no donation by the city of city lands for any purpose whatever except such as I have mentioned. She may have done so as to the cemeteries, but I do not know the fact.

In answer to the 17th interrogatory he says:

17th. I do not know. I have never heard of any such demand being made by the city.

In answer to the 18th interrogatory he says:

18th. With the exception of the time mentioned in my answer to the seventh interrogatory the garrison grounds have been held by the forces of the United States since the year 1848, within my knowledge. I never knew of any written agreement under which they have held the same.

In answer to the 19th interrogatory he says:

19th. The said Stillman, Belden, and Hale made costly improvements for the protection of said levee and Levee street, and were never, to my knowledge, denied that right by the said city, nor did the city ever interfere in any manner with said works or the control of the same
406 by said company. If they have done so, the city records should show it.

In answer to the 20th interrogatory he says:

20th. The possession of the levee has always been held by said levee company, as stated in my answer to the sixth interrogatory, since I knew it about the year 1848. Said company has always assumed and exercised control over the same since that year for their own purposes, being that of steamboat landings, wharves, and for ferry landings. The ferry over the Rio Grande has always been run by said company as their own property, except as to interruptions caused by the war, and said receiver, without molestation or hindrance by the city, said company receiving the rents and profits of the same. The said ferry, levee, wharf, and property of said company to said city lands are now in the hands of a receiver appointed, as stated in my answer to the 13th interrogatory, who is now receiving the rents and profits of the same.

In answer to the 21st interrogatory he says:

21st. I know nothing of the fact enquired about in this interrogatory.

In answer to the 22nd interrogatory he says:

22nd. I know of nothing else, which now occurs to me, which will be of advantage to the defendants herein.

WILLIAM KELLY,
U. S. Commissioner.

Answers of F. J. Parker to cross-interrogatories propounded.

The cross-interrogatories, as hereunto annexed, were now propounded to the said defendant, F. J. Parker, in their due order, and by him answered.

To the first cross-interrogatory he answers:

407 1st. I know the facts enquired about by my residence here since 1848. I do not know of my own knowledge that the Espiritu Santo grant is patented, but have always understood that it is.

To the 2nd cross interrogatory he answers:

2nd. I mean, as I have stated in answer to the third direct interrogatory, I know it by general reputation—by maps which I have seen and from an agreement of partition between heirs of said grant, which, as clerk of the then United States district court at this place, I once copied. Of my own knowledge I know nothing of the destination of ejidos for Matamoras, commencing about 1826 or 1827.

To the third cross-interrogatory he answers:

3rd. I have stated that said middle portion of said grant extends below the limits of said city and garrison grounds. I refer now to the

whole extent of the city as defined by its first charter. The government grounds are included within the city limits. My means of information are both actual knowledge and general information. First and last, I have seen nearly the whole of the city or town tract; I have also seen maps of actual surveys which shew it as I have stated. I refer to one of them which I saw yesterday, the map of H. M. Feild attached to his deposition in this cause; I have also seen several others to the same effect.

To the fourth cross-interrogatory he answers:

Cross-int. 4. I do know the place called Mansfield. I do not know how far westerly the town tract extends; the space mentioned is occupied by labor holders. I do not know many of them personally, and cannot name them all, nor do I know from whom they derive their holdings; I have never seen their titles. They are, with few exceptions, I
408 believe, all Mexicans. Some of the holders that I recollct are McAllen, Garza, Ramirez, and Salas. There are many more whom I do not know.

To the 5th cross-interrogatory he answers:

5th. I do not know how far, but I should say between two and three miles. There are labor-holders, but I do not know them, nor under whom they claim their holdings.

To the 6th cross-interrogatory he answers:

6th. My means of knowledge are what I have learned from some of the members of the said land company themselves, and from general reputation, and from seeing John Treanor as agent for Donna Maria Josefa Cavazos for many years collect rents of land belonging to the said middle portion of the Espiritu Santo grant outside of the city limits.

To the 7th cross-interrogatory he answers:

8th. I cannot state them further than I have done. I do not know who are the holders of said labors, from whom they have their holdings, nor who were their predecessors, or whether they have paid taxes or not. I am not personally acquainted with any of the said labor-holders, that I recollect, except John McAllen Severo Garza, Jean Castaing, and Encarnacion Salés, and I have never learned any of the facts enquired about from them. I do not know of Maria Josefa Cavazos having any particular point within said town tract, belonging to said middle portion of said grant enquired about, except that portion within the ejidos north of the garrison grounds, and adjoining the same, and the east line of the claim of said land company, the same being the northeast corner of said ejidos, as shown by the map of the said Field before referred to.
409 The only act I can recall evidencing her possession is the fact known to me of her agent, John Treanor, collecting rent upon and for said property.

To the 8th interrogatory he answers:

Cross-int. 8th. I mean by the term possession, actual possession, so far as a person or number of persons can have possession of landed property under a survey, without having it fenced or planted. As regards the lands in question, I use the term possession as applied to the Brownsville Land Company to convey that they, by themselves or their agents, actually lived on a portion of the property; other portions they rented or leased, and collected the rents; other portions they sold, and delivered titles, and gave purchasers possession, and exercised such care and supervision over the property as would to an ordinary observer convey the impression of ownership.

To the 9th cross-interrogatory he answers:

'9th. I do not know the quantity of land enquired about in either di-

vision of this cross-interrogatory. I think the town tract so called (the ejidos, I mean) is much larger than the claim of Stillman & Hale, but as I do not know what they do claim, I cannot say of my own knowledge.

In answer to the 10th cross-interrogatory he says:

Cross-int. 10th. I have said nothing about the payment of taxes in any of my answers.

In answer to the 11th cross-interrogatory he says:

11th. I have given the names of none of the lot-holders in my said answers. I do not know that in their capacity as such land company they ever enclosed any of the lands in question, or (of my own knowledge) ever paid taxes on them. It is a fact to the best of my knowledge that no city lots, or other lands in the city of Brownsville, have been
410 fenced in by said company as a company. The said Stillman, Belden & Basse had lots of their own, as individuals, which were fenced in. I do not know their number, or how they acquired them, or whether they fenced them themselves or not. I speak now of Stillman & Belden; Basse acquired possession of three lots by suit on mortgage, which I bought at sheriff's sale, two of which were fenced; I also bought of him another lot at another time, which was fenced. I do not now remember from whom he acquired the last, and I do not know who fenced it. The numbe's are 1 & 2 in block 88, 6 in block 89, and 10 in block 94, in the city of Brownsville. The nature of the outlying lands is as stated in this cross-interrogatory. I do not know that the said land company, or any of said defendants, ever did fence in or inclose any of the said lands claimed by them, as I have stated in this answer.

In answer to the 12th cross-interrogatory he says:

Cross-int. 12th. I do not know. I was absent from Brownsville from November, 1863, until some time in 1865. When I returned I believe the Freedman's Bureau had possession of the lands and ferries. Mr. Stillman was then in Matamoras, Mexico. Mrs. Cavazos was also there. I do not know where Mr. Hale was. I think I saw him once in Matamoras, in 1865, and once in Brownsville, in 1866. I do not know who else, if any one, had possession during the period enquired about. In all I have said about possession, I do not embrace the time the said property was in possession of the forces of the United States.

In answer to the 13th cross-interrogatory he says:

13th. I do know said market-house. I saw it built about 1850, as I recollect. It was built by Suzeaneau and McDonough, under
411 contract with the city of Brownsville, on block 57, one of the then surveyed blocks in the city. Said market, with the open space or square around it, does not occupy the whole of said block. There are buildings belonging to private individuals, holding titles under said land company, erected upon the ends of all the lots of said block No. 57, fronting on Washington and Adams streets, to the depth of 50 feet (the original lot being one hundred and twenty feet deep). The market and market square, with the exception of said lots, so built upon, occupies the whole of the balance of said square, and the alley belonging to it. The said square was established by the city, and has been, together with the market building, in the possession of the city ever since, except during interruptions caused by the war. Since the final payment by the city to the said builders, in 1866, the city claims said property as her own, and collects the income from the same. Since its erection to the present time it has been applied to the uses of a market. The city does claim to be the owner of said market, the land it is built upon, and the space or square around it, under its grant from the State of Texas. The city in its corporate capacity has claimed the

town tract under its first charter, but the people (the inhabitants) have been pretty nearly equally divided on the question, and have sometimes elected citizens to the council who were known to be adverse to the prosecution of such a claim. It has defended, and lately has prosecuted suits at law in assertion and defence of its claim. I do not know
412 that the city enjoyed the ferries over the Rio Grande at the time enquired about, and previously thereto. The people of Brownsville, before the city was incorporated and afterwards, did use a block of ground, or more, some seven tiers of blocks from the river, as a public burrying ground, and no other was used for several years, up to the establishment of the new burrying ground. I do not recollect at what precise date, but it was inclosed in 1866. The city has had control of the general repairing, grading, cleaning, draining, and management of the streets since the incorporation of the city in 1850. The streets were laid out 1848, and on the incorporation of the city were dedicated to it for those purposes by the Brownsville Land Company. I have seen the act of dedecation. It was drawn in my presence by Robert H. Hord, one of the land company.

In answer to the 14th cross-interrogatory he says:

Cross-int. 14th. I know nothing about the subject-matter of this interrogatory, except that the city in 1870 did join in the proceedings for the condemnation of the said national cemetery. I do not recollect about the proceedings in the dist. court in 185 , referred to. I know there were some legal proceedings, but have forgotten their character. I never heard that the government paid rent for the garrison grounds. Of my own knowledge, I do not know why they do not pay.

In answer to the 15th cross interrogatory he says:

Cross-int. 15th. I know nothing of the subject-matter of this interrogatory.

In answer to the 16th cross-interrogatory he says:

16.h. I have known Levee street since about the beginning or middle of the year 1848. It was laid off in that year. The survey of the
413 city commenced at the corner of Levee and 12th streets, where Stillman's brick warehouse now stands. The term "the levee" is usually applied to that portion of the thoroughfare from the corner of 12th street (Stillman's corner) to the garrison wall, and "Levee street" to that portion above Stillman's corner as far as laid out. Yes, except when interrupted by the river, it has been used as a thoroughfare, as other streets.

In answer to the 17th cross-interrogatory he says:

17th. Yes; George Lyon was employed by the city, and made a survey, which is of record.

In answer to the 18th cross-interrogatory he says:

18th. Said levee was occupied by said land company from 1848 from 12th street downstream to the garrison fence, and from said 12th street up-stream around the bend of the river to a point opposite or near Castaing's garden, at such times as they needed it, while it was practicable as a landing, to the present time. From said 12th street up around said bend the land was gradually washed away, and that part of the river front for a long time ceased to be generally used, except for the purpose of laying up steamers when not in use. About four or five years ago the land again made and is now again being used as the ferry and steamboat landing, the same being just below the line of 12th street. The occupation of said levee by said land company has been continuous since 1848 to the present time, except such interruptions as may have been caused by the war and the appointment of a receiver.

In answer to the 19th cross-interrogatory he says:

Cross-int. 19th.- Said company at different times since its incorporation has used different portions and points of the levee as the state
414 of the river bank permitted, and to repair the breaks and damages caused from time to time by the washing away by or breaking in of the river; have had nearly all the front from opposite 11th street down to the garrison wall under extensive repair.

In answer to the 20th cross interrogatory he says:

20th. Yes; so far as practicable, to my knowledge, and have expended large sums of money in so doing. I am not aware that the levee was at any time in disuse, except while undergoing repairs and damages caused by storms, freshets, or the encroachments of the river; but a sufficient portion has always, to the best of my knowledge, been kept in a condition of practicable utility for the purpose of the commerce of the city. At the present time there is no wharf attached to the levee. Both the old and new wha'ves were destroyed last year, partly by the encroachment of the river in the months of July and August last, and completely by the hurricane which visited this section in the early part of September, 1874. I am not aware whether the said levee company has ever expropriated or purchased any land for the purpose of its franchise or not. I do not know whether the receiver is collecting levee dues at present.

In answer to the 21st cross-inter'ogatory he says:

Cross-int. 21st. The works enquired of have been upon the levee and not the Levee street. The causeway in question is at the junction of 12th and Levee. It is not on and within 12th street or its continuation down to the margin of the river at the landing. It deflects from the line of said street in a southeasterly direction, so that both the ferry and steamboat landings are clear of the line of continuation of
415 said street if it was continued down to the bank of the river.

In answer to the 22nd cross-interrogatory he says:

Cross-int. 22. I am a partner of Wm. G. Hale in a tract of land and rancho called Santa Rosa, about one hundred miles from Brownsville. I have been such partner for fifteen or sixteen years. I was a senator in the legislature which granted the charter of the said levee company. I do not know who first proposed said charter. I voted for and in favor of it.

The 23rd cross-interrogatory is directed to Edward Downey separately.

In answer to the 24th cross-interrogatory he says:

24th. There is no other fact that now occurs to me that would be of benefit to the plaintiff in this suit.

F. J. PARKER.

I certify to the correctness of the foregoing deposition.

WILLIAM KELLY,
U. S. Commissioner, Eastern Dist. of Texas.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

Suit pending in the U. S. circuit court, eastern district of Texas.

To the honorable U. S. circuit court for the eastern district of Texas, at Galveston, Texas:

The undersigned, a commissioner appointed by mutual consent
416 of the parties in the said cause to examine F. J. Parker, a witness in this cause, respectfully reports that the said witness attended

before me at my office in the city of Brownsville, Texas, and being publicly sworn by me to tell the truth, the whole truth, and nothing but the truth, was examined by me on the interrogatories and cross-interrogatories herewith returned, neither the counsel for the plaintiff nor for the defendant being present; that the answers of the said witness thereto are truly stated in the accompanying depositions signed by him, and that no objections were made to the answers or proceedings on either side.

In testimony whereof I have hereunto set my hand and seal at Brownsville, Texas, this 9th day of June, 1875.

[L. S.] WILLIAM KELLY,
U. S. Commissioner, Eastern District of Texas.

Commissioner's fees:

Oath	10
46 folios	9 20
Com'ss'r's attendance—2 days (a' 3 p'r d'y)	6 00
	15 30

Answers of Henry Klahn to interrogatories propounded.

THE UNITED STATES OF AMERICA:

Eastern district of Texas, in the 5th circuit.

THE CITY OF BROWNSVILLE, *vs.* MARIA JOSEFA CAVAZOS AND OTHERS. } No. 202.

Suit pending in the U. S. circuit court, eastern district of Texas, at Galveston, transferred from Brownsville.

417 Answers and depositions of Henry Klahn, a resident of Brownsville, in Cameron County, Texas, to the accompanying interrogatories and cross-interrogatories propounded to him in the above-entitled cause, before William Kelly, duly appointed by the United States circuit court for the eastern district of Texas as United States commissioner in accordance with law, and authorized to take depositions in the above cause in accordance with a stipulation entered into by the parties in said cause, acting by and through their respective attorneys therein, on file in said court.

And the said Henry Klahn, being by me duly examined, cautioned, and sworn according to law, deposes and says, and answers as follows:

To the first direct interrogatory he answers:

1st. My name is Henry Klahn; my age, 59 years; my residence is Brownsville, Cameron County, Texas; my occupation is at present presiding justice of Cameron County aforesaid.

To the 2nd direct interrogatory he answers:

2nd. The lands known as the Espiritu Santo grant lie on the left bank of the Rio Grande. I am acquainted with the lands in question.

To the third direct interrogatory he answers:

3rd. The city of Brownsville and the garrison grounds of Fort Brown are included in the Espiritu Santo grant of lands, and I believe them to be a part of the middle portion of the said Espiritu Santo grant.

In answer to the fourth direct interrogatory he says:

4th. The said middle portion of the said Espiritu Santo grant extends about a mile above the corporate limit of Brownsville to a point or line between the Ranneno and Las Prietas, and below the garrison
418 grounds about two and a half miles to a point or line below the rancho Santa Rosalia, on the north about twelve leagues to the arroyo Colorado; on the south the Rio Grande is the boundary of both the said tract and the said city.

In answer to the 5th direct interrogatory he says:

5th. Maria Josefa Cavazos is the owner of the lands in question, less the portions sold under her title to other parties, who are the Brownsville Land Company, certain labor holders to me unknown or whose names I do not now remember, and the United States, who have purchased and own the cemetary within the garrison of Fort Brown.

In answer to the 6th direct interrogatory he says:

6th. The Brownsville Land Company was first composed of Charles Stillman, Samuel A. Belden, and Jacob Mussina, then afterwards Basse and Hord; then Mifflin Kenedy; then Stillman and Belden again, with whom were now associated Wm. G. Hale. The lands comprising that portion of the middle portion of the Santo Espiritu on which the city of Brownsville and the garrison grounds of Fort Brown are located.

In answer to the 7th direct interrogatory he says:

7th. The said land company have had possession of the said lands for about twenty-three years, since 1848, less a portion of the period covered by the late war, and the time during which the said lands have been in possession of a receiver. I believe the taxes were paid on the said lands by the said Brownsville Land Company during all the period named except during the late war and the time that they have
419 been in hands of a receiver. I have always understood, and do so believe, that the taxes of the city lots and other landed property in the said town tract were assessed to the Brownsville Land Company, but from memory cannot state for what particular years.

In answer to the 8th direct interrogatory he says:

8th. I held the office of county clerk of Cameron County for the years 1860 to 1865, five years, and have been presiding justice of the said county for the past year—since December, 1873, which office I now hold.

In answer to the ninth direct interrogatory he says:

9th. I have never held the office of assessor or collector of city taxes.

In answer to the tenth direct interrogatory he says:

10th. Since I have been assessor of taxes for the second precinct of Cameron County, the returns for the lands in question have been made by Robert Dalzell, receiver, appointed by the court in the case of the City of Brownsville vs. Maria Josefa Cavazos and others, except as to the garrison grounds of Fort Brown, which have been returned by John Treanor, as agent for the said Maria Josefa Cavazos.

In answer to the 11th direct interrogatory he says:

11th. The Brownsville Land Company consisted of first, Charles Stillman, Jacob Mussina, and Samuel A. Belden; secondly, of Elisha Basse and Robert H. Hord; thirdly, of Mifflin Kenedy; fourthly, of Charles Stillman, Samuel A. Belden, and William G. Hale. I know all of them since 1849, except Jacob Mussina, who was represented by his brother, Simon Mussina, which said Simon I knew in 1849. I believe that Charles Stillman is living and resides in New York; Samuel A. Bel-
420 den died in New York; Elisha Basse is living in Denver, Colorado; Robert H. Hord died in the State of Mississippi; Mifflin Kenedy

is living in Nueces County, Texas; Wm. G. Hale resides in the city of New Orleans.

In answer to the 12th direct interrogatory he says:

12th. The lands of the said Brownsville Land Company are a part of the middle portion of the Espiritu Santo, in Cameron County, including the city of Brownsville, that is, that portion of the corporate limits of Brownsville known as the town tract, including all of the inhabited portion of the city. I understand also that the said company claim or has an interest in the garrison grounds of Fort Brown, exclusive of the cemetary location, which has been purchased by the United States. Their present ownership is less by such lots as they have sold to purchasers.

In answer to the 13th direct interrogatory he says:

13th. The Brownsville Land Company held the possession of the lands described since 1848 or 1849. I am not positive as to 1848, although I believe their possession commenced in that year. Up to 19th day of December, 1872, when the Hon. Wm. H. Russell, in district court of Cameron County, appointed Robert Dalzell, receiver of the rents, revenues, and ferry incomes of the aforesaid lands, and excepting a portion of the period during the late war when actual possession was held by the United States troops.

In answer to the 14th direct interrogatory he says:

14th. The Brownsville Land Company, which consisted of at various times as stated in my answer to the 11th interrogatory. The
421 said company, to my knowledge, had possession of the said lands from the year 1848 or 1849 up to the date of the appointment of a receiver, and a portion of the time during the Confederate war as stated in my last answer.

In answer to the 15th direct interrogatory he says:

13th. To the best of my knowledge, the city of Brownsville never did exercise any acts of ownership over the lands of Brownsville, or the garrison grounds of Fort Brown.

In answer to the 16th direct-interrogatory he says:

16th. The city of Brownsville never did donate any of the lands in question within my knowledge.

In answer to the 17th direct interrogatory he says:

17th. Not to my knowledge.

In answer to the 18th direct-interrogatory he says:

18th. The Government of the United States, by its Army, has had possession of the grounds of Fort Brown for twenty-seven years, with the exception of a short period in 1859, before the Cortina war, and a portion of the time during the Confederate war. By what authority they occupied the place, or with whom any agreement, written or verbal, was made, I cannot answer.

In answer to the 19th direct interrogatory, he says:

19th. The Brownsville Land Company assumed control of a part of Levee street, commonly called "The Levee," in the city of Brownsville, and the expenditures made for the protection and repair of that part of the street were paid by said company or their agents to my certain knowledge. Not to my knowledge did the city of Brownsville ever deny the right of said land company to control and protect the said
442 portion of Levee street, and to make such expenditures; nor did the city try to prevent, or interfere in any way with such control and protection, as I know of.

In answer to the 20th direct interrogatory he says:

20th. To my knowledge the Brownsville Land Company has had pos-

session of the levee from 1848 or 1849 until the same was transferred in 1866 to the Brownsville Levee Company. During this period, the one company or the other has had full possession and control of the levees, and used the same for the purposes of steamboat and ferry landings, and enjoyed all the rents and profits arising from the same, except during a portion of the time covered by the late war, and a short period thereafter. The Brownsville Land Company have always to my certain knowledge applied as owners of the land to the county court for licences to run two public ferries accross the Rio Grande, one at Brownsville and one at Freeport, and the said licenses have always been granted to them as such owners, and to my knowledge have always received and enjoyed the rents and profits arising from the same, except during the period already referred to in the late war.

In answer to the 21st direct interrogatory he says:

21st. The following named persons, I believe, paid taxes on lands not sold by the said land company: Juan Castaing, Donna Rosa Flores, Lorenzo Ponce, Nestor Garcia, Agapito Guerrero, Mrs. S. McAllen, Encarnaçion Sales, J. A. Ramirez, and Cecilo Salas, on the west side of the town; and on the east, Nicano Falcon, C. Falcon, L. Falcon, and
423 Mrs. M. Falcon, Sinon Garcia, Felipe Garcia, José D. Garcia, and a few other labor-holders, whose names I do not recollect. Those parties are labor-holders, whose holdings are within the aforesaid middle portion of the Espiritu Santo grant, and the holdings of some of them extend into the town-tract of the Brownsville Land Company, as I believe.

In answer to the 22nd direct interrogatory, he says:

22nd & last. To the benefit of the defendants, I will state the following donations made by them of lands to public bodies and to the city of Brownsville, and the same appear of record, viz:

The site of the new Brownsville Cemetery, about acres to the city of Brownsville, donated June 22nd, 1868; block No. 130, of the city of Brownsville to the Hebrew Benevolent Society for a cemetery, on September 7th, 1868; two city blocks, 393 and 394, to trustees, for use as school-house for colored population, the United States having erected the building on the said blocks for the said use. Nothing further occurs to me at present.

WILLIAM KELLY,
U. S. Commissioner, E. D. T.

Answers of Henry Klahn to cross-int'g's propounded.

The cross-interrogatories as hereunto annexed were now propounded to the said deponent Henry Klahn, in their due order, and by him answered as follows:

To the first cross-interrogatory, he answers:

Cross-int. 1. I know that the Espiritu Santo grant is patented and numbered 968, volume 12, to the heirs of Salvador José de la Garza, first class, 64 leagues $\frac{6\,4\,7\,8\,7\,5}{1\,0\,0\,0\,0\,0\,0}$, signed by H. R. Runnels, governor, on the 21st day of June, 1859. I know this to be the fact because I am the man who
424 recorded that patent (which was written on parchment), in book of real estate H, 300 and 301, of the records of Cameron Co., on on the 10th day of June, 1862.

To the 2nd cross-interrogatory he answers:

Cross-int. 2. I have no personal knowledge of the destination of the ejidos for Matamoras in 1826 or 1827; there is no reference to them in the patented grant. I have always understood and believe that the city

of Matamoras did not take the necessary steps to expropriate the land known as the ejidos, and that that land remained with the original owner. I derive my conclusions from maps I have seen of the middle portion of the said grant, particularly from a map of the grant by George Lyons; from general belief here, and from the fact that I have always regarded the title of Maria Josefa Cavazos to be the best title to those lands.

To the 3rd cross interrogatory he answers:

Cross-int. 3. My information was derived from Elisha Basse and Robert H. Hord years ago—the exact date of which I do not now recollect. They had control and management of the lands at the time—the lands in question, I mean to say. The question whether I mean the body of the town or town-tract of the city, I do not understand, and therefore cannot answer the same.

To the fourth cross-interrogatory he says:

Cross int. 4. I do know the locality of the place formerly called Mansfield; know the warehouse of John Young; knew Van Reed's house and Captain Lewis' place, and other buildings, whose owners I do not now recollect. I do believe that the lands of the Brownsville Land Company, within the middle portion of the Espiritu Santo grant, do extend about half a mile in a westerly direction above the said warehouse of John Young. The intermediate space on the river front is occu-
425 pied by labor-holders, and their names are as follows: Lorenzo Ponce, Nestor Garcia, Agapito Guerero, Mrs. S. McAllen, Eucarnacion Salas, J. H. Ramirez, Cecilio Salas, heirs of José Ma. Vera, Barcenas and Brothers, and others not recollected. From whom they derive their tenures or holdings, I cannot positively state.

In answer to the 5th cross-interrogatory he says:

Cross-int. 5. About two and a half miles below the garrison grounds of Fort Brown, and such intermediate space on the river is occupied by labor-holders, whose names are as, to wit, Nicanor Falcon, Cezaria Falcon, Leon Falcon, Mrs. Mametha Falcon, Camilla Garcia, Simon Garcia, Felipe Garcia, José D. Garcia, and others not now recollected by me. Their tenures and holdings, I cannot positively state from whom they derive or hold them.

In answer to the 6th cross interrogatory he says:

Cross-int. 6. My means of information are a personal knowledge of the lands and persons named.

In answer to the 7th cross-interrogatory he says:

7th. I can add nothing further than is contained in my two next preceeding answers, except that most of them have been there since 1848 or 1849. I believe they have each of them paid their taxes or been assessed for taxes by the proper authorities. Maria Josefa Cavazos has occupied a dwelling and some ground near the convent, and a labor adjoining the garrison grounds of Fort Brown. The dwelling is occupied by her agent, John Treanor, and the rents of holdings in the aforesaid labor had always been collected and paid to her or her agent up to the time of the appointment of a receiver.

In answer to the 8th cross-interrogatory he says:

Cross-int. 8. I spoke in answer to the 13th and not in the 12th interrogatory as to the possession of the Brownsville Land Company.
426 My particular definition of the term possession in this case means: The owners, which I believe the said land company to be, have held, and sold or rented, or leased the said lands up to the time of the appointment of the receiver, and except during the portions of the war period hereinbefore mentioned, have paid the taxes on

same, and generally and notoriously exercised such control and supervision over the same as owners of property usually do.

In answer to the 9th cross-interrogatory he says:

Cross-int. 9. I do not know the number of acres of land in the subdivisions mentioned. Yes; the corporate limits of the city of Brownsville embrace a very much larger portion of the middle portion of the Espiritu Santo grant than is claimed by Stillman & Hale.

In answer to the 10th cross-interrogatory he says:

10th. Yes; I believe the labor-holders have paid their taxes, or been assessed for taxes, as I have stated in my answer to the 7th cross-interrogatory.

In answer to the 11th cross-interrogatory he says:

11th. I did not say nor pretend to say that I have given names of all the persons occupying lots or labors in the city of Brownsville. I was not asked so to do in the questions referred to. I do not know of my own knowledge whether the Brownsville Land Company, as such, have fenced or enclosed any lots or other portions of the property. Nearly all the members of the company have done so, and improved property to a large extent. Unimproved chaparal lands, except as to the labors, which are cultivated, and some few locations worked as brick-yards. There is no prairie land within the city limits. There is some land on which there is no timber or chaparal, but it is not
427 prairie land. No enclosures have been made, so far as I know, of the character enquired about.

In answer to the 12th cross-interrogatory he says:

Cross-int. 12. I cannot say positively. Within the period mentioned I saw Charles Stillman in Mexico; do not remember the particular date; Mrs. Cavazos, I think, resided in Matamoras during all of the period. I cannot speak positively as to Mr. Hale's whereabouts during that time, but I saw him at least twice in Mexico within the period mentioned. I was absent myself from Brownsville and cannot tell who had possession of the lands in question and the ferries during this period. I did not know anything about the Freedmen's Bureau. In all my answers touching possession, I have excepted the portion of time embraced within those dates, because I was absent from Brownsville and could not speak of my own knowledge as to that period.

In answer to the 13th cross-interrogatory he says:

13th. I know the market-house of the city of Brownsville since it was built in or about 1850. It was built by the city of Brownsville on the lands of the Brownsville Town Company, on which they squatted for that purpose. The city established the plaza around it on the same lands. The city has been in possession of said market-house and square since they were established. The city claims to own it, and has collected the income arising from it since its establishment. The money has been applied with few exceptions to the carrying on of the city government. The city does make such a claim, but the land company has always disputed it. I cannot say whether the city of Brownsville
428 set up a claim to the town tract immediately after the incorporation of the city. She did however set up such a claim, and that claim has been the fruitful source of trouble and litigation for the town, dividing the inhabitants, creating adverse interests, where there should be harmony, and generally retarding the prosperity of the place. She has defended and more recently prosecuted suits at law in defence and assertion of her claim to the title to said lands. I am unable to state positively as to whether the city enjoyed the ferry or its revenues at the time named or any other time. The city of Brownsville did use a block

or square of ground about seven tiers of blocks from the river as a public burying ground, but that ground had been so used before, and for many years previous to the incorporation of the city. She merely continued the use of it as a cemetery, and took very little trouble or expense, if any, in caring for it. It continued to be so used up to the establishment of the new burying ground. I cannot positively state in what year the city of Brownsville has had the control of the general repairing, grading, draining, and management of the streets and alleys of the city; not since they were laid out, for they were laid out long before the incorporation of the city, but after incorporation, and by virtue of a dedication made to it for that purpose by the Brownsville Land Company, and excepting that portion of the river front known as "the levee," which to my knowledge has been in the care of the said company, and more recently of the Levee Company, and at present of the receiver.

In answer to the 14th cross-interrogatory he says:

429 Cross-int. 14. Of my own knowledge I know nothing of the authority by which the United States forces occupy the garrison grounds of Fort Brown. Not that I know of; I never heard of such protest before. I know nothing of the proceedings in the dist. court of Cameron County in 185— spoken of; nor of the proceedings in the Federal court in 1873, except by report that they had purchased the island for a cemetery. I do not know whether the government of the United States have or have not ever paid any rent for the said grounds, nor why.

In answer to the 15th cross-interrogatory he says:

Cross-int. 15. I believe the parties named did pay taxes on lands as labors; cannot say as to quantities, nor as to whether the whole of said labors are within the lands claimed by the Brownsville Land Company. I believe that Juan Castaing and Rosa Flores still hold their labors adversely to the claim of the said company.

In answer to the 16th cross-interrogatory he says:

Cross-int. 16. I have known Levee street since the streets of Brownsville were laid out, 1848 or 1849. It was laid out at the same time as the other streets. The terms "The Levee," and Levee street, are not used commonly to signify the same thing, although the former is a continuation of the latter. By Levee street is usually meant that portion of the thoroughfare above Twelfth street; and by "The Levee" that portion from the corner of Twelfth to the garrison wall. It has always been a thorough' for foot passengers and for vehicles at all times when the state of the river permitted it. It has sometimes been obstructed by abrasion of the river.

In answer to the 17th cross-interrogatory he says:

430 Cross-int. 17. I do not know whether George Lyons surveyed the lands for the city or the Land Company. He did make a survey, which, with map and field notes, are of record.

In answer to the 18th cross-interrogatory he says:

Cross-int. 18. The Brownsville Levee Company, as I am informed, took charge of the levees in 1866, but I was absent from Brownsville in that year. When I returned in 1867 the said company was in possession of the levee, and the river front, as far up as my house; they were then erecting breakwaters and taking measures to protect the city front, from Levee street, along the levee, to the garrison boundary, which was threafened with washing away by the river. Subsequently they built wharves and steamboat and ferry landings on the levee, most of which were destroyed by the hurricane of 1867. Immediately after the hurricane (which was in October, 1867) they recommenced repairing the river

front and building wharves, and spent, I know from my own observation, immense sums in so doing. But, during all the period of their repairs, they kept up a practical steamboat and ferry landing, on some point or other of their line, sufficient for the wants of the commerce and people of the city. They remained in possession of the levee until the possession was transferred to the receiver.

In answer to the 19th cross-interrogatory he says:

Cross-int. 19. My answer to cross-interrogatory next preceding fully covers all the questions asked me in this interrogatory, and I am unable to add anything here on that subject.

In answer to the 20th cross-interrogatory he says:

431 20th. To the best of my knowledge said levee company kept in repair and defended the river front alluded to, even when the elements worked against them, and at periods when the Rio Grande was out of its banks, and expended immense sums of money to their works and that portion of the river bank where they were situated. The levee was in disuse at no time that I know of. I do not know whether the receiver, collects levee dues at present. There is no wharf at present. When the property was turned over to the receiver there were two wharves both of which have since been washe l away. The last wharf was desrtoyed, with its large wharf-shed, by the hurricane of September last. I do not know whether the levee company purchased or expropriated any lands for the uses of its franchise.

In answer to the 21st cross-interrogatory he says:

21. The works erected by the said levee company have not been entirely within Levee street. A good deal of money has been expended in making fences, driving spiles, and making breakwaters and other obstructions, to divert the current of the river, above 12th street, in order to save that portion of the levee where their principal works *works* were, and to save the same from washing away. Those expenditures, although not altogether successful in saving and protecting their own wharves and landings, was of vast utility to other owners of property on the river bank, and much valuable property on St. Charles, Levee street, and the levee was preserved in consequence of their outlays. The levee or causeway lately constructed by the receiver is at the junction

432 of 12th street and Levee. It is not on and within 12th street or its continuation, but runs in a southeasterly direction from th e junction of the streets last above named, until it reaches the margin of the river, at the ferry landing, entirely clear of 12 street.

The 22nd cross-interrogatory is directed separately to F. J. Parker.

The 23rd cross interrogatory is directed to Edward Downey separately.

In answer to the 24th cross-interrogatory he says:

Cross-int. 24th (and last). I do not know of anything further of benefit to the plaintiff herein.

HENRY KLAHN.

I certify to the correctness of the foregoing deposition.

WILLIAM KELLY,
U. S. Commissioner East Dist. of Texas.

THE CITY OF BROWNSVILLE }
vs. }
MARIA JOSEFA CAVAZOS ET ALS. }

Suit pending in the U. S. circuit court at Galveston. Transferred from Brownsville.

To the honorable U. S. circuit court for the eastern district of Texas, at Galveston, Texas:

The undersigned, a commissioner appointed by mutual consent of

the parties in the said cause to examine Henry Klahn, a witness in this cause, respectfully reports: That the said witness attended be-
433 fore me, at my office in the city of Brownsville, Texas, and being publicly sworn by me to tell the truth, the whole truth, and nothing but the truth, was examined by me on the interrogatories and cross-interrogatories herewith returned; neither counsel for the plaintiff nor for the defendant being present. That the answers of the said witness thereto are truly stated in the accompanying depositions, signed by him, and that no objections were made to the answers or proceedings on either side.

In testimony whereof I have hereunto set my hand and seal, at Brownsville, Texas, this eleventh day of June, 1875.

[L. S.] WILLIAM KELLY,
U. S. Commissioner Eastern District of Texas.

Commissioner's fees:

Oath	10
49 folios	9 80
Com'ss'r attendance 2 days	6 00
	15 90

Wm. K.

Answers of Francisco Yturria to interrogatories propounded.

THE UNITED STATES OF AMERICA:

Eastern district of Texas, in the 5th circuit.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS AND OTHERS. } No. 202.

Suit pending in the U. S. circuit court, eastern dist. of Texas, at Galveston. Transferred from Brownsville.

434 Answers and depositions Francisco Yturria, a resident of Brownsville, Cameron County, Texas, to the accompanying original interrogatories and cross-interrogatories propounded to him in the above-entitled cause, before William Kelly, duly appointed by the United States circuit court for the eastern district of Texas a United States commissioner, and duly qualified as such commissioner, in accordance with a stipulation entered into by the parties in the said cause, acting by and through their respective attorneys therein, on file in said court.

And the said Francisco Yturria, being by me duly examined, cautioned and sworn according to law, deposes and says and answers as follows:

To the first interrogatory he answers as follows:

1. Francisco Yturria. Age, forty-six years; residence, Brownsville, Cameron County, Texas; profession, merchant.

To the second interrogatory he answers:

2. I know the lands known as the Espiritu Santo grant. It lies on the left bank of the Rio Grande.

To the third interrogatory he answers:

3. They are in the portion known as the middle portion.

To the fourth interrogatory he answers:

4. The middle portion of the Espiritu Santo grant extends above the inhabited portion of the city of Brownsville about three miles, to a line in the neighborhood of the rancho Las Prietas, and below the garrison grounds about three miles, to a line some short distance below
435 the rancho Santa Rosalia; on the north it runs back to the arrorya Colorado, and on the south it is bounded by the Rio Grande.

In answer to the 5th interrogatory, he says:

5th. The owners of the lands constituting the said middle portion of the Espiritu grant are Maria Josefa Cavazos and those who have derived title from her, who are, so far as I know them, Stillman, Belden, and Hale, who purchased the portion on which the city of Brownsville is located, and who had been possession since 1848, and certain other parties who purchased other portions, but whose names I do not now recollect.

In answer to the 6th interrogatory he says:

6th. As I remember, in the first place, Charles Stillman and Samuel A. Belden and Jacob Mussina; then Elisha Basse and Robert H. Hord, then Mifflin Kenedy; after him Stillman and Belden again, with whom William G. Hale was subsequently associated. The lands held by the aforesaid parties was that portion of the middle portion of the tract of the Espiritu Santo grant bounded on the east by the garrison fence, and on the west by a line near the ranche of Ramerenia, on the south by the Rio Grande. I am unable to locate the northern boundary.

In answer to the 7th interrogatory he says:

7th. The said land company has held possession of the lands described since 1848, and, to the best of my knowledge, have paid taxes on the same during that period, except, perhaps, during a portion of the late war, and since the appointment of a receiver. The garrison grounds have been in possession of the forces of the United States.
436 I cannot say who paid taxes on them. The city lots and other landed portions of the city of Brownsville were assessed for taxes, which were paid by the said land company until sold by them; after sale such portions as were sold by them were assessed for taxes to the purchasers. I cannot say for what particular years.

In answer to the 8th interrogatory he says:

8th. I have not.

In answer to the 9th interrogatory he says:

9th. Have held no town or county office.

In answer to the 10th interrogatory he says:

10th. See last answer.

In answer to the 11th interrogatory he says:

11th. I have named them in answer to the sixth interrogatory. I have known them all since 1849, except Jacob Mussina, whom I have never seen, and William G. Hale, whom I have known since 1853. Charles Stillman resides in New York; Samuel A. Belden died in New York; Jacob Mussina, I believe, resides in New York; Elisha Basse resides in Denver, Colorado; Robert H. Hord died in Mississippi; Mifflin Kenedy resides in Nueces County, Texes; William G. Hale resides in New Orleans.

In answer to the 12th interrogatory he says:

12th. The present location of the city of Brownsville, commencing on the east at the garrison fence, and otherwise bounded as stated in my answer to the sixth interrogatory.

In answer to the 13th interrogatory he says:

13th. The Brownsville Land Company held possession of the lands described from 1848 up to the appointment of a receiver, in De-
437 cember, 1872, and excepting a short period at the close of the late war.

In answer to the 14th interrogatory he says:

14th. I have known the lands in question since 1843. They were then in possession of certain labor holders who held from the city of Matamoras, but whose holding and possession was disputed by Don Rafael Garcia Cavazos, husband of Maria Josefa Cavazos, he and she claiming to own the lands, on the ground that the city of Matamoras had never purchased or paid for the same and had no title thereto. The labor holders left on the occupation by the American Army in 1846; shortly afterwards Rafael Garcia Cavazos, who also left the side *side* of the river, on the approach of the American Army, returned to his residence, which was situated on a portion of the land now occupied by the garrison of Fort Brown, and took possession of his ranche there. I cannot say who was in possession of the lands from 1846 to 1848. In the latter part of 1848, the lands in question were taken possession of by Charles Stillman, Samuel A. Belden, and Jacob Mussina, who comprised the Brownsville Land Company, and who, and their successors, continued in possession up to the appointment of a receiver in December, 1872, as before stated, and excepting a short period at the close of the war.

In answer to the fifteenth interrogatory he says:

15th. None to my knowledge, except as to the streets and alleys, and the market place, which are under her control.

In answer to the 16th interrogatory he says:

16th. Not to my knowledge.

438 In answer to the 17th interrogatory he says:

17th. Not to my knowledge.

In answer to the 18th interrogatory he says:

18th. Up to 1848 various labor holders, but I believe it to have been for the most part unoccupied from 1846 to 1848; since 1848, the forces of the United States, except for some period during the Confederate war. I do not know by what tenure the United States holds it.

In answer to the 19th interrogatory he says:

19th. The Brownsville Land Company took charge of the levee in 1848, and continued to control and protect the same from the encroachment of the river up to 1866, when the Brownsville Levee Company took charge of it, and continued to control, repair, and improve the same until the appointment of a receiver in 1872. I never knew of the city in any way interfering in such control.

In answer to the 20th interrogatory he says:

20th. The possession and control of the levee have been as stated in my next preceeding answer. The land company held such possession and control for the purpose of establishing and maintaining wharves and ferry landings and the approaches thereto. In 1866 the Brownsville Levee Company assumed the control of the wharves and steamboat landings, but the possession and occupation of the ferries has always been in the Brownsville Land Company, since 1848 and up to the appointment of the receiver, except for a certain period during the Confederate war.

In answer to the 21st interrogatory he says:

21st. I am not familiar with the payers of taxes; that is I can-
439 not say whether any persons other than the Brownsville Land Company have paid taxes on the lands in question. I believe not.

In answer to the 22nd and last interrogatory he says:

22nd. I would state that I am a native of the city of Matamoras; since my boyhood I have always heard of Donna Francisco Cavazos as the owner of the lands of the middle portion of the Espiritu Santo. I also know that when the legislature of the State of Tamaulipas granted to the city of Matamoras the lands known as the ejedos, which ejedos took in a portion of the lands of the aforesaid Donna Francisco Cavazos, the grant was conditioned that the said city should pay to the owners of the land a fair price and valuation therefor; and I have always heard and believe that the city of Matamoras did not comply with the conditions of the said grant in this respect, and did never pay for the said lands, and that the Cavazos family has always resisted the title of the city of Matamoras thereto.

WILLIAM KELLY,
U. S. Commissioner.

Answers of Francisco Yturria to cross interrogatories propounded.

The cross-interrogatories hereunto annexed were now propounded to the said deponent, Francisco Yturria, in their due order, and by him answered as follows:

To the first cross-interrogatory he answers:

Cross-int. 1. I know the location of the middle portion of the Espiritu Santo grant, by having seen the titles, by having seen the records, by having examined such papers as have given me full knowledge of the said land; by having lived here all my life I have become familiar
440 with all the facts connected therewith. I know that it is patented, having seen the record of the patent in the records of Cameron County; the whole grant is patented to the extent of sixty-four leagues and over to José Salvador de la Garza. I have lately exainmed the record to refresh my memory as to this fact.

To the second cross-interrogatory he answers:

Cross-int. 2nd. I mean that the city of Brownsville and the garrison grounds of Fort Brown are now within the middle portion of the Espiritu Santo grant. I have always understood and believe that the expropriation of that portion of the lands of Donna Francisco Cavazos, which were included in the land destined for ejidos of Matamoras, was never completed, as she protested against such expropriation, and was to my knowledge never paid for the lands in question.

In answer to the 3rd cross-interrogatory he says:

Cross 3rd. My means of information as to the location of the middle portion of the Espiritu Santo grant are fully stated in my answer to cross-interrogatory number one. When I shall mention the city of Brownsville herein, I shall mean the corporate limits of the city; when I shall refer to the lands owned by Stillman, Belden, and Hale I shall designate them as the "town tract."

In answer to the 4th cross-interrogatory he says:

4th. I know the place formerly called Mansfield. The corporate boundary of the city of Brownsville extends about a mile westerly beyond the place where John Young's warehouse was located. Such intermediate space on the river front is occupied by labor-holders;
441 they are Cicilio Salas, Encarnacion Salas, and others, who hold their fields or labors under the claim of Matamoras to those lands as ejidos given said city by the legislature of Tamaulipas.

In answer to the 5th cross interrogatory he says:

5th. The corporate limits of the city of Brownsville extend easterly from the northern angle of the quartermaster's fence around Fort Brown about two miles. This space is occupied on the river by laborholders, Juan Añorga and others. Those parties hold under the claim of the city of Matamoras described in my next previous answer.

In answer to the 6th cross-interrogatory he says:

Cros-int. 6th. My means of information on this subject are fully stated in my answer to the first cross-interrogatory.

In answer to the 7th cross-interrogatory he says:

7th. The following, so far as I can recollect them, are the names, are the holders of ranches or labors on the river front, within the middle portion of the Espiritu Santo grant: Antonio Ramirez, Cicilio and Encarnacion Salas, Juan Vera, Juan Castaing, Juan Añorga, José Garcia, and several others. They or their predecessors derived their title under the claim of the city of Matamoras to the ejidos, and have held such title since before the Mexican war. I cannot say whether they have paid the taxes or not.

(See following X Int. 8.)

In answer to the 8th cross-interrogatory he says:

8th. The Brownsville Land Company purchased from Maria Josefa Cavazos what is called the town tract, running westerly on the
442 river front, from the garrison fence to a line near the former location of Mansfield. I do not know how far north their purchase ran. This tract includes all the inhabited portion of the city of Brownsville. In speaking of possession, I use it to signify the fact that the said land company has held and used the tract described since 1848; and during that time have exercised all the rights of ownership, by selling, leasing, and renting lots, and giving purchasers, lessees, or rentors possession thereof; by enjoying the riparian rights and privileges; and by the fact that they have been recognized by almost all the citizens of the town who have purchased from the said land company their lots, and nearly all of whom have paid therefor, as such owners.

In further answer to a part of cross-interrogatory 7th, whic' was omitted to be put to deponent in its regular order, and which is now propounded to him, he says:

Supplemental to X Int. 7:

Supplemental to cross-int. 7th. I know that up to and previous to 1849 Donna Maria Josefa Cavazos, with her husband Don Rafael Garcia Cavazos, resided, or had a ranche which they occasionally occupied, on grounds which are now partly within the garrison of Fort Brown, and which are within the incorporate limits of the city of Brownsville. I do not particularly remember when they ceased to live there.

In answer to the 9th cross-interrogatory he says:

Cross-int. 9th. I cannot accurately state the quantity of land in each of the divisions enquired about. The corporate limits of Brownsville are much larger than the claim of Stillman & Hale.

In answer to the 10th cross-interrogatory he says:

443 10th. I have already stated that I cannot say whether laborholders have paid taxes or not.

In answer to the 11th cross-interrogatory he says:

11th. I do not pretend to say that I have given all the names. I believe that the land company, as such, did fence in and build upon the lot at the corner of Levee and Fourteenth street, which they used as an office and warehouse. I do not recollect the number of the block and lot. I believe this lot was improved in 1866 or 1867. I do not know

there are any except the one just mentioned. The land within the corporate limits, outside the body of the town and away from the river front, is mostly chapparal, uninclosed, uncultivated, and almost uninhabited. I cannot say as to what enclosures the said land company has made.

In answer to cross-interrogatory twelve he says:

Cross-int. 12th. During this period Mrs. Cavazos was in Matamoras. Stillman was in Matamoras from 1863 to some time in 1865. Hale, I believe, during most of this period was in Texas. I do not remember who had charge of the lands and ferries during this period. In all my answers I have excepted this period, or the greater part of it, as the war period.

In answer to the 13th cross-interrogatory he says:

13th. I know the market-house since it was built. It was built by Suzeneau and McDonagh on one of the blocks in the surveyed portion of the city. The city of Brownsville established the square, or plaza, around it; but their occupation of said square or block was
444 always contested by the land company. The city of Brownsville has been in possession of the plaza and the house since the building of the latter. The city of Brownsville and Stillman & Hale, respectively, claim to own it. The former collects the revenue arising from it, and has done so since it was established. Since its establishment it has been used as a public market. I have already stated who claim *who claim* the market-house and square. Such a claim has been made for the city of Brownsville; but all of the inhabitants, so far as I know or have heard, who purchased property on the town tract, bought the same from the land company, and took their title thereto. I never heard of any person purchasing a title from the city of Brownsville until within the past few months, during which the city authorities have been granting quitclaim titles for one dollar apiece. It has defended a suit brought by Basse and Hord for possession of the market; and lately, in the present cause, has prosecuted a suit in assertion of its claim to the town-tract lands. I do not know that the city of Brownsville ever enjoyed the ferries across the Rio Grande. There is an old graveyard about seven tiers of blocks from the river which was established in 1847 or 1848, over two years previous to the incorporation of the city, in fact since the first settlement thereof. This graveyard continued to be used as a public cemetery until the establishment of the new cemetery; not since they were first laid out, but since the first organization of the city council, the city of Brownsville has had charge and control of the streets and alleys.

445 In answer to cross-interrogatory 14th he says:

Cross-int. 14. I know nothing of my own knowledge about the nature of the authority, if any, of the United States Government to occupy the garrison grounds of Fort Brown. I know *know* nothing of any transactions between the city authorities and the Government of the United States as to those grounds. I do not remember ever having heard of any proceedings in the district court of Cameron County in 185 . I have heard that the city authorities did join as a party in the U. S. circuit court to the proceedings in relation to the condemnation of the National Cemetery. I cannot say whether the government ever paid rent or not.

In answer to the 15th cross-interrogatory he says:

Cross-int. 15. I know the parties named hold labors, but know nothing about whether they pay taxes or not. Castaing and Flores still hold their labors within said tract adversely to the said land company.

In answer to the 16th cross-interrogatory he says:

16th. I have known Levy street since it was laid out, at or about the same time the other streets were laid out in 1848. The terms "the levee" and Levee street do not mean one and the same thing. From Stillman's corner down to the garrison wall is generally called "the levee," and that portion above Stillman's is called Levee street. It has always been a public thoroughfare when it could be so used. The "levee" has frequently been obstructed by the encroachment of the river.

It is at present impassible for carriages, although still used a' a
446 thoroughfare for foot passengers.

In answer to the 17th cross-interrogatory he says:

17th. The city did cause a survey of a portion of its incorporated limits to be made by George Lyon in 1850. I do not know how much he surveyed. I am informed and believe that the field-notes of that survey were recorded in the records of Cameron County.

In answer to the 18th cross-interrogatory he says:

18th. The Brownsville Levee Company occupy the whole of the front of the levee from opposite Stillman's corner to the garrison wall, and for purposes of repair and in taking precautions to preserve that front from being washed away by the river, their works extended still further up the bend. Their occupation commenced some time early in 1867, and continued up to the appointment of a receiver in 1872.

In answer to the 19th cross-interrogatory he says:

Cross-int. 19. The said levee company have always had more in use at one time than a section of said levee; as I before stated, they used all of the front of the levee either for wharves, landings, or for purposes of repair.

In answer to cross-interrogatory 20th he says:

20th. They have at all times when it was practicable kept the levee in repair. They have always maintained sufficient wharves or landings for the accommodation of the commerce, except at times when the river either swept their works away or so encroached on Levee street and the levee as to make work on them for a time impossible; as, for instance, during the hurricanes of October, 1867, September, 1873, and
447 Sept., 1874, and immediately after. It has never been in disuse, although there has been no wharf on it since the hurricane of September, 1874. I do not know whether the receiver collects levee dues. I believe not since the hurricane before mentioned. I do not know whether the said levee company has ever purchased any land for the use of its franchise.

In answer to cross-interrogatory 21 he says:

Cross-int. 21. No; they have been chiefly on the levee, although after the encroachment of the river (in 1868, I believe), the levee company repaired Levee street, between 11th and 12th streets, and rendered that portion of the street passable. They also spent large sums of money up the bend with the view of so directing the force of the current from this bank as to preserve the levee and portions of Levee street from being washed away. The embankment lately erected by the receiver commences at the junction of 12 and Levee street. It is not on or within 12th and its continuation down to the margin of the river at the landing. The landings, both ferry and steamboat, are opposite block 58, and not on the continuation of 12th street.

X interrogatory 22 is addressed to F. J. Parker separately.

X interrogatory 23 is addressed to Edward Downey separately.

In answer to the 24th and last cross-interrogatory he says:

Cross-int. 24th and last. I do not recall any further facts having application to this cause.

F. YTURRIA.

448 I certify to the correctness of the foregoing deposition.

WILLIAM KELLY,
U. S. Commissioner Eastern District of Texas.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS.

Suit pending in the U. S. circuit court, eastern district of Texas, in Galveston. Transferred from Brownsville.

To the honorable U. S. circuit court for the eastern district of Texas, at Galveston, Texas:

The undersigned, appointed by mutual consent of the parties in the said cause to examine Francisco Yturria, a witness in this cause, respectfully reports that the said witness attended before me, at my office in the city of Brownsville, Texas, and being publicly sworn by me to tell the truth, the whole truth, and nothing but the truth, was examined by me on the interrogatories and cross-interrogatories herewith returned, neither counsel for the plaintiff nor for the defendant being present. That the answers of the said witness thereto are truly stated in the accompanying depositions, signed by him, and that no objections were made to the answers or proceedings on either side.

In testimony whereof I have hereunto set my hand and seal, at
449 Brownsville, Texas, this fifteenth day of June, 1875.

[L. S.] WILLIAM KELLY,
U. S. Commissioner Eastern Dist. of Texas.

Commissioner's fees:

Oath	10
43 folios	8.60
Commissioner's attendance, 2 days	6.00
	14.70

W. K.

The foregoing depositions were endorsed as follows:

"Publication made May 20th, '76, by consent of parties in writing.
"C. DART, *Clerk.*"

"Filed May 20, 1876.
"C. DART, *Clk.*"

The envelope containing the foregoing interrogatories, cross-interrogatories, and depositions endorsed as follows:

"Address: Christopher Dart, esq., clerk United States circuit court for the eastern dis. of Texas, at Galveston, Texas."

"THE CITY OF BROWNSVILLE
450 *v.*
MARIA JOSEFA CAVAZOS AND OTHERS."

"Depositions of F. J. Parker, Henry Klahn, and Francisco Yturria,

taken by commissioner. Sealed and delivered to Mr. Thomas Carson, as messenger, at Brownsville, Texas, on the 19th day of June, A. D. 1875.

"WILLIAM KELLY,
"*U. S. Comm'r E. D. T.*"

"C. L. 877."

"Thomas Carson, being duly sworn, on oath says that he received this package of depositions from the hands of William Kelly, a commissioner duly appointed by the U. S. circuit court for the eastern district of Texas, the officer before whom the within depositions were taken; that they have not been out of his possession since, and have undergone no alteration.

"THOMAS CARSON.

"Sworn to and subscribed before me June 30th, 1875.
"C. DART, *Clerk.*"

"Received from the hands of Thomas Carson, June 30th, '75.
"C. DART, *Clerk.*"

"Filed June 30th, '75.
"C. DART, *Clerk.*"

"We agree that these depositions may now be opened by the clerk.

451 "JAS. R. COX,
"*For Df'ts.*
"POWERS & MAXAN,
"*For Pl'ff.*

"May 26, '76."

"Publication made May 20, '76, by consent of parties.
"C. DART, *Clerk.*"

452 *Interrogatories propounded to H. M. Field & Antonio Yznaga.*

In the U. S. circuit court for the eastern district of Texas, at Galveston, transferred from Brownsville.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS AND OTHERS. } No. 202.

Only Field and Yznaga examined, the other witnesses not appearing.

W. KELLY, *Com.*

Interrogatories propounded to the witnesses, H. M. Field, Antonio Yznaga, all residents of Cameron County, Texas, whose answers thereto, when taken and returned, will be read in evidence by defendants on the trial of the above-entitled cause, under agreement of counsel herein.

Interrogatory 1st. What is your name, age, residence, and occupation or profession, and how long have you resided in the county of Cameron?

2nd. Do you know the lands embraced within the limits of what is known as the Espiritu Santo grant, as patented? and, if so, please

state where the land lies, whether on the right or left bank of the Rio Grande River. And do you know the map hereto attached; and, if so, state who made the same, and is said map a correct map of the lands therein indicated and described?

453 3rd. Do you know the land comprised within the middle portion of the said Espiritu Santo grant? And if yea, does the said middle portion of said Espiritu Santo lands include the city of Brownsville and the garrison grounds at Fort Brown, Texas?

4th. If in the next preceeding interrogatory you answer yea, state how far above the city of Brownsville and the said garrison grounds the said middle portion of the said Espiritu Santo lands extend; also, how far below the said city and the said garrison grounds, and how far north, south, east, and west from said city and garrison grounds.

5th. Do you know who were, or who are, the owners of the said lands embraced within the said middle portion of the said Espiritu Santo lands? And if so, state who such owners are, how long you have known them, how long they have had possession of said lands, since what year and up to what time; State, also, against whom the taxes on said lands have been assessed, and by whom paid.

6th. Who constituted the Brownsville Land Company? Give the names of each member of said company, how long you have known them, where they reside, if living, and if dead, where they died, and of what lands the said company were possessed.

7th. If in the next preceeding interrogatory you answer that said company was possessed of the middle portion of the said Espiritu Santo lands, state how long said company has held such possession.

454 8th. Have you held any county or city office in Brownsville? And, if so, state what office and when, and for what particular years you held the same; and if you answer that you have been assessor and collector of taxes, state who paid the taxes on the city lots and other landed portions of the city of Brownsville during that time.

9th. Do you know, or have you ever heard of any person paying taxes to the city, county, or State, on any lot or land embraced within the Brownsville Land Company's tract, except on such lots or lands as had been previously sold by the Brownsville Land Company or some members thereof? And if so, state the name of such person and all the circumstances of such payment, when and where, for what years, and to whom it made.

10th. Who has had and held possession of the city lots and other landed portions of the city of Brownsville since you first knew it, and did the city of Brownsville ever exercise any acts of ownership over said lands? And if so, when, and what were the acts of ownership so exercised by the said city of Brownsville; and did the city of Brownsville ever donate any of said lands for any specific use or purpose; and if so, when, and for what particular use or purpose was such donation made?

11th. Do you know of any part of said lands having been dedicated to a particular use; and, if so, for what use; and by whom was the donation made, and to whom?

455 12th. Who has occupied the garrison grounds since you knew it; and if you answer that the Government of the United States has occupied the said grounds by its Army, state how long, and by what kind of authority, whether verbal or written, and with whom such agreement was made, and has the city of Brownsville ever demanded possession of the said garrison grounds from the Government of the United States, or claimed payment of rents, or proposed to sell the same or de-

manded the purchase thereof by the said gover'ment? If so, state when, and the circumstances.

13th. Who has had possession and control of the levee since you knew it, and for what purposes, and what private parties have assumed the control and protection of Levee street, in the said city of Brownsville, and by whom were expenditures of money and labor for that purpose made, and did the said city ever deny said right of control or in any way interfere to prevent such exercise of control and protection over the same? And, if so, state when and to what extent.

14th. Do you know any other matter or thing in or about the questions at issue between the parties to this suit which may be of advantage to defendants herein? If so, state fully and distinctly in your answer.

W. G. HALE,
J. R. COX, AND
B. B. SEAT,
For Defendants.

456 Service of the foregoing interrogatories was had on us by handing us the same, for the purpose of propounding cross-interrogatories, the 20th of May, 1875.

POWERS & MAXAN,
Att'ys for Plaintiff.

The foregoing interrogatories indorsed as follows:

"No. 202. The City of Brownsville vs. Maria Josefa Cavasos, Charles Stillman, & others. Interrogatories to H. M. Field, Antonio Yznaga, F. M. Campbell, James Dougherty, Henry Miller, and Adolphus Glavecke.

457 Map attached to depositions of H. M. Field and Antonio Yznaga.

(Here follows map marked page 457.)

458 *Cross interrogatories propounded to H. M. Field, Antonio Yznaga, & others.*

In the U. S. circuit court, eastern dist. of Texas, at Galveston, transferred from Brownsville.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVASOS & ALS. } No. 202.

The p't'ff herein, reserving all and every manner of exceptions to the competency, legality, relevancy, and admissibility of the interrogatories herein propounded to the witnesses H. M. Field, Antonio Yznaga, F. M. Campbell, James Dougherty, Henry Miller, and Adolphus Glaevecke, as well as to the manner of taking and returning their answers thereto, now propounds the following cross-interrogatories to the said witnesses:

Cross-int. 1. If you shall have answered to the second direct interrogatory in the affirmative, state how you know each of the facts enquired about. Do you know that the said Espiritu Santo grant is patented, and to what extent? When & how have you learned these facts? Give details of time and circumstances as the same occurred.

Cross int. 2. If you shall have answered to the third direct interrogatory that the city of Brownsville and the garrison grounds at Fort Brown are comprised within the middle portion of the Espiritu Santo grant, state whether you do not mean that they are included
459 within the original limits of that grant as the latter stood before the destination of ejidos for Matamoras, commencing about 1826 or 1827. If you mean otherwise, declare fully your meaning, and state how you derive your conclusions.

Cross-int. 3. If you shall state, in answering the fourth direct interrogatory, how far above and below, and north, south, east, and west from the city of Brownsville and garrison grounds of Fort Brown the middle portion of the Espiritu Santo grant extends, please state your means of information, and whether, when you refer to the city of Brownsville herein, you do not mean the body of the town, and not the town tract of said city.

Cross-int. 4. Do you know the locality at the place formerly called Mansfield, known as John Young's warehouse; and, if yea, how far westerly above the latter does the town tract of the city of Brownsville extend? Is not such intermediate space on the river front occupied by labor-holders? And, if yea, name them, and state from whom they derived their tenure or holdings.

Cross-int. 5. How far below or easterly from the most northern point or angle of the fence, known as the quartermaster's fence, around
460 Fort Brown, does the said town tract of Brownsville extend, and is not such intermediate space occupied on the river front by labor-holders? And, if yea, name them, and state from whom they derived their tenures or holdings.

Cross-int. 6. In answering the fifth direct interrogatory, state particularly all your means of information.

Cross-int. 7. State what ranchos, labors, and localities on the river front are notoriously within the said middle portion of the Espiritu Santo grant, by whom held and occupied, from whom have those so holding and occupying the said labors, ranchos, and localities derived their possessions, and since when have they and their predecessors, under such tenure, so held such possessions; and have not such holders paid the taxes thereon? As to any point within the town tract of Brownsville, have you known the defendant Maria Josefa Cavazos to hold or possess any part or portion of the said middle portion of the Espiritu Santo grant? And, if yea, state specifically what particular portion, and at what times and during what periods has she held or possessed the same up to the present time, and by what acts of
461 hers has such possession, if any, been shown.

Cross-int. 8. If, in answer to the sixth direct interrogatory, you shall speak of possession, please state in what sense you use such term as regards the lands in question, and to what limits; please give your particular definition of the term possession, as applied to the lands in question.

Cross-int. 9. Do you know the quantity of land embraced in the middle portion of the Espiritu Santo grant, the quantity comprised in the town tract of the city of Brownsville, and that embraced in the claim of defendants Stillman & Hale? And, if yea, state what those quantities are, respectively. Is not the town tract of the city of Brownsville much larger than the claim of Stillman & Hale?

Cross-int. 10. If in answer to the direct interrogatories as to who paid taxes on the city lots and other landed portions of the city of Brownsville, please state whether the labor-holders previously mentioned,

within the town tract of the city of Brownsville, have not paid taxes on their labors.

462 Cross-int. 11. During the time enquired about in the 9th direct interrogatory, did or did not Ignatius E. Roca, John Castaing, Patrick C. Shannon, William Patterson, Rosa Flores, and others, pay taxes on land as labors, and in what respective quantities, within the tract enquired about in said direct interrogatory, against the claim of the said Brownsville Land Company; and do not John Castaing and Rosa Flores hold their labors still within the said tract adversely to said land company, and do they not pay taxes thereon up to the present time?

Cross-int. 12. If you have answered anything of substance to the 10th direct interrogatory, do you pretend to give the names of all the persons who occupy lots and other landed portions of the city of Brownsville, and how they hold the same? Can you say that the said Brownsville Land Company themselves, as such, have ever had a single lot fenced in or enclosed upon which they paid taxes, which was not the property of some person who had purchased? If yea, particularize such lot or lots by numbers of blocks and lots, and state specifically how long such enclosure has been made. Is it not a fact that there are no city lots or

463 other lands within the town tract of the city of Brownsville fenced in or enclosed by the said Brownsville Land Company? What is the nature and character of the outlying lands of the town tract of the city of Brownsville outside of the body of the town and away from the river front? Is it not chapparal and prairie, and unenclosed, uncultivated, and nearly uninhabited? Has the said land company, or any of the said defendants, ever fenced in or enclosed the land or lands claimed by them respectively or any portion thereof? and, if yea, particularize such enclosures, and state how, when, and where the same have been so made, and how long ago.

Cross-int. 13. Where were the defendants, Cavazos, Stillman, & Hale, say from November, 1863, to about the middle of 1866? Who had charge of the lands involved in this suit during said time, and of the ferry or ferries across the Rio Grande at Brownsville? Did not the Freedman's Bureau have possession and charge of said lands and ferry or ferries, and did it not take possession of the same during said time? If not, who did? Did the said defendants, or either of them, or any one for them, have charge or possession of the said lands continuously during said

464 time? If, in answering the defendants' direct interrogatories, you shall state anything of substance regarding the pretended possession of said lands by the said land company or the defendant Cavazos, state now whether you embrace in your answer or answers thereto the period of time between the dates above mentioned.

Cross-int. 14. Do you know the market-house of the city of Brownsville, and since when? Who built it? On what land? Who established the plaza or square around it? Who has been in possession thereof since the construction of said market-house, and the establishment of the said plaza or square? Who claims the same as owner and collects the income arising from it, and since when and to what use has it been and is it applied? Does not the city of Brownsville claim to be the owner of the said market-house and the land it is built upon, together with the plaza or square around it, under its grant from the State of Texas; if nay, how otherwise? Has not the city of Brownsville notoriously claimed the ownership of its town tract since the time of its grant from the State? Has it not defended and prosecuted suits at law in assertion and defence of its claim to the title to said lands? Did not the city of Brownsville en-

joy the ferries across the Rio Grande within its town tract under
465 its ownership thereof on the 24th of January, 1850, and previously thereto? Did not the city of Brownsville use a block of ground some seven tiers of blocks from the river as a public burying-ground, and was there any other used for several years, and up to what time were burials made in the same? Has not the city of Brownsville had the control of the general repairing, grading, draining, and management of the streets since they were first laid out?

Cross-int. 15. If you shall answer anything of substance to the 11th direct interrogatory, state what are your means of information.

Cross-int. 16. If you shall state anything of substance in answer to the 12th direct interrogatory about the nature of the government's authority to occupy the said garrison grounds, state how you know the same, whether from actual knowledge or hearsay. Did not the City of Brownsville, on several occasions, set up its ownership to the said garrison grounds before the Government of the United States, and protest against the payment of any moneys for rent or otherwise accruing from said lands to any one but itself as owner thereof? Did or not the said City of Brownsville join as a party in the
466 proceedings for the appraisal and condemnation of the said garrison grounds, in the district court of Cameron County, about the year 185 , and in this hon. court at Brownsville in 1873, in the proceedings for the appraisal and condemnation of the island within said garrison grounds, on which the national cemetery is now established? Has the Government of the United States ever paid rent for the occupation of said garrison grounds? If nay, why?

Cross int. 17. How long have you known Levee street? Do you know when it was first laid out? Was it not laid out at the same time as the other streets of the city? Are not the terms "the Levee" and "Levee street," used to signify the same thing, and are they not one and the same? Has it not been a public thoroughfare for foot-passengers and vehicles from the time it was laid out, the same as the other streets of the city?

Cross-int. 18. Did not the city of Brownsville, in 1850, cause a survey of its town tract to be made by Geo. Lyon, and monuments or marks and posts to be placed along the lines and at the corners of the survey, and were not the field notes of the said survey recorded in the
467 county court records in August, 1854?

Cross-int. 19. If an answer to any of the defendants' direct interrogatories as to the use or possession of the levee or Levee street in the said city of Brownsville, you shall say that the same was occupied by the Brownsville Levee Company, state specifically what sections or portions of said levee were occupied by said Levee Company, of what dimensions as to space, and between what periods, and down to what time; declare fully.

Cross-int. 20. Did the said Levee Company at any time have more in use at any one time than a section of the said levee, and to what extent in this respect? state fully; and also as to vacant space or spaces unoccupied of said levee at the different periods from the beginning of said Levee Company's occupation.

Cross-int. 21. Have the said Levee Company at all times kept their levee work in repair? Or if the same is or was ever at any time in disuse, when was it so at any time; and is it so now, and does or not the receiver collect levee dues for its use? Is there any wharf attached to the said Levee street at the present time, and how long since is
468 it that there has been no wharf? Has the said Levee Company

from about same date. I have never been assessor or collector of taxes for either city or county.

No. 9. In answer to the 9th direct interrogatory he says: I know nothing about the subject-matter of this interrogatory.

No. 10. In answer to the 10th direct interrogatory he says:
474 The Brownsville City Company, composed, as I have before answered, and Robert Dalzell, as receiver appointed by the court as aforesaid, have held possession of the city lots and other landed portions of the city of Brownsville since I first knew it. I know of no acts of ownership by the city of Brownsville of or over said lands, except the sale of lots in the cemet'ry of the city and quitclaim deeds which they have recently executed for a small consideration; nor do I know of any donation made by the said city for any purpose whatever.

No. 11. In answer to 11th direct interrogatory he says: I know of land having been dedicated to the use of the public and others, as follows: The public square called Washington Square; the lands of the city cemet'ry to the city; the lands comprising the Jewish burying ground to the Hebrew Benevolent Society; a lot of land to trustees for the use of a colored public school; all donated by the Brownsville Land or City Company, composed as I have stated in my answer to interrogatory six. I

No. 12. In answer to 12th direct interrogatory he says: The military forces of the United States have occupied the garrison grounds
475 of Fort Brown, Texas, since I first arrived in this county. I know not by what authority they occupy them. I know nothing of the further subject-matter of this interrogatory of my own personal knowledge.

No. 13. In answer to the 13th direct interrogatory he says: When I first knew "The Levee" the provost-marshal of the U. S. forces at Brownsville had it in his possession; after that, the City Company, composed as I have before stated; after it, the Brownsville Levee Company, an incorporated body; succeeded by the receiver, Robert Dalzell, appointed as aforesaid. The said Levee Company assumed the control and protection of a portion of Levee street known as "The Levee," in the said city of Brownsville, and made expenditures of money and labor for that purpose. I do not know of any act on the part of the city interfering with the said parties in the control and protection of the levee, although I have been employed by the said city to make surveys to ascertain the extent of the encroachments and accretions made by the said river on the said Levee street. I know there is a suit pending in regards to the rights referred to in this interrogatory, but am not fully acquainted with the nature of the same.

476 No. 14, and last. In answer to 14th and last direct interrogatory he says: I do not now remember anything further that in my opinion would be of benefit to the defendants in this cause.

WILLIAM KELLY.

Deposition of H. M. Field.—Answer to cross int'g's.

The interrogatories, as crossed by plaintiff's counsel, were now propounded to witness, and answered as follows:

Cross-int. 1. In answer to the 1st cross-interrogatory he says: I know that the Espiritu Santo grant is patented, because I have had the patent in my possession. It is patented to the extent represented by the map hereto attached to the interrogatories that are now here propounded to

me. The first positive knowledge I acquired of the lands of said grant was when I received the surveyor's records of Cameron County, say about the beginning of the year 1869, when I saw the said lands mapped upon the record-map of said county. Since then I have seen maps from the general land-office of the State of Texas of this section of country in which said Espiritu Santo lands are set out. I had the original patent in my possession within the last three months several times. I mean the original patent of the State of Texas of the said Espiritu Santo grant, and I had it while engaged in making out the map attached
477 to these interrog*rog*atories for the purpose of verifying the records of Cameron County aforesaid by compairing with the said patent.

Cross-int. 2. In answer to cross interrogatory No. 2 he says: I know that the lands on which the city of Brownsville and the garrison grounds of Fort Brown are situated are within the Espiritu Santo grant from an examination of the patent from the State of Texas to the heirs of José Salvador de la Garza, deceased, dated on the 21st day of June, 1859, and I so mean, deriving my conclusions from the said patent and from the field notes set out in the same.

Cross int. 3. In answer to cross-interrogatory No. 3 he says: I have clearly explained in answer to direct interrogatory fourth the extent of the middle portion of the Espiritu Santo grant, in connection with the city of Brownsville's corporate limits, the town tract, and the garrison grounds, and my knowledge is in said answer detailed, and has been obtained during my incumbency of the offices of county surveyor, deputy county surveyor, and city surveyor, and from the devision made of the said Espiritu Santo grant by George Lyon, a former surveyor of said county, and from having acquired personal knowledge of lines
478 run and landmarks placed in said divisions.

Cross-int. 4th. In answer to the 4th cross-interrogatory he says: The warehouse enquired about in this cross-interrogatory was not in existance when I came to this country. I know from information obtained from older residents about where the line herein enquired of is, and from said line the town-tract (meaning now the corporate limits of the city of Brownsville) extends over a mile westerly and above. The intermediate space on the river is occupied by labor-holders whose names I do not now remember, except that the family of the Veras holds some of such labors; also a man named Encarnacion Salas and others, at a place called Ramerania. They hold under titles derived from the city of Matamoras, Mexico.

Cross-int. 5th. In answer to 5th cross-interrogatory he says: The town-tract of the city of Brownsville (meaning now the corporate limits thereof) extends about two miles below or easterly from the most northern point or angle of the quartermaster's fence around Fort Brown, and such intermediate space is for the greater portion occupied by labor-holders, whose names I do not now remember, but know that all or most of them hold titles from the city of Matamoras, Mexico.

479 Cross-int. 6th. In answer to cross-interrogatory sixth he says: My means of information have been my personal observation and leases and deeds which I have seen to parcels of the lands in my said answer mentioned.

Cross-int. 7th. In answer to cross-interrogatory seventh he says: The Ramerania, Freeport, Brownsville, garrisson grounds, Los Tomates, and a portion of the Rancho Santo Rosalia. The lands are variously held under titles from the heirs of José Salvador de la Garza and labor titles from the city of Matamoras, Mexico. I do not know how long the present occupants and claimants or their predecessors have

held their tenures, nor whether such holders have paid taxes thereon. Cannot state specifically what part within the corporate limits of Brownsville has been held or possessed by the defendant, Maria Josefa Cavazos. I know that up to the appointment of a receiver, her agent, John Treanor, collected rents of certain lots and holdings lying east of the Stillman & Hale tract.

Cross-int. 8th. In answer to 8th cross interrogatory he says: I speak of possession as regards the lands in question as evident to my mind by the selling and leasing of lots, parts, and parcels of the land.

480 Cross-int. 9th. In answer to cross-interrogatory 9th he says: I do not now recollect the exact quantity of land embraced in the middle portion of the Espiritu Santo grant or in the corporate limits of the city of Brownsville, or in the claim of Stillman & Hale, but the corporate limits of the city of Brownsville are much larger than the claim of Stillman and Hale.

Cross-int. 10th. In answer to the 10th cross-interrogatory he says: I have not answered to the effect indicated in this cross-interrogatory.

Cross-int. 11th. In answer to the 11th cross-interrogatory he says: I answered to direct interrogatory 9th that I knew nothing of the subject-matter thereof. I do know that John Castaing and Rosa Flores still hold and occupy labors within the said claim of Stillman & Hale, that of Rosa Flores being partialiy within and partially without said claim. In regard to who pays the taxes I know nothing.

Cross-int. 12th. In answer to the 12th cross-interrogatory he says: I have not nor do I pretend to give the names of all parties who occupy lots, &c., in the city of Brownsville, or tell how they hold the

481 same. I cannot say that the said Brownsville Land or City Company themselves, as such, have ever had a single lot fenced in or inclosed. The individual members have had lots fenced in and held them as their own. I surveyed at one time and staked off for the said Brownsville Land Company a number of blocks of city lots, and also a number of blocks of farm lots. I do not know of any lots fenced in or inclosed by the said company. They may have such inclosed lots and I not know of them. The outlying lands are mostly chapar'al; there are a few scattered labores or small Mexican farms on the banks of the Resecas; the greater parts of the lands being uninclosed, uncultivated, and nearly uninhabited. As an individual the defendant Stillman has several inclosed and improved lots, notably the one on which his warehouse is situated, and others comprising his hide yard. These lots were inclosed and improved when I came here, and I do not know how long before that time.

Cross-int. 13th. In answer to the 13th cross-interrogatory he says: I do not know where the defendants Cavazos, Stillman, and Hale were from November, 1863, to the middle of 1866. I do not know who had charge of the lands involved in this suit during the whole of said

482 time, or of the ferry or ferries across the Rio Grande. I know that the provost marshal of the U. S. forces had charge of the ferries for a portion of the time aforesaid. Do not know who held possession continuously of said lands during said time.

Cross-int. 14th. In answer to cross-interrogatory 14th he says: I know the market-house of the city of Brownsville. I have known it for the last ten years. I do not know who built it. It is on the lands of the Stillman & Hale claim. I do not know who established the plaza or square around it. The city of Brownsville claims the same as owner and enjoys the income arising from it, and has done so since I knew the market-house. I know the city of Brownsville claims to be the owner

of the said market-house and the land it is built upon, together with the plaza or square around the same, but I do not know of my own knowledge by virtue of what title it claims the same. Since I have been here there has been litigation involving the ownership of the lands in question. I know nothing at all about the ferries in 1850. I know that a block of ground some seven tiers from the river has been used as a burying ground, but by whom or at what time I do not know.

The city of Brownsville has had control of the general repairing,
483 grading, draining, and management of the streets for the last ten years.

Cross-int. 15th. In answer to the 15th cross-interrogatory he says: I have seen the title papers to the donations referred to in my answer to the 11th direct interrogatory.

Cross-int. 16th. In answer to the 16th cross-interrogatory he says: I have no positive knowledge of the matters and things enquired of in this cross-interrogatory.

Cross-int. 17th. In answer to the 17th cross-interrogatory he says: I have known Levee street for the past ten years. I do not know when it was laid out; a portion of Levee street is known as "the Levee," that portion was used as a public th'roughfare for foot passengers and vehicles until washed away by the river.

Cross-int. 18th. In answer to the 18th cross-interrogatory he says: Such survey was made by the person stated, as I have seen maps of it, but I do not know for whom made.

Cross-int. 19th. In answer to the 19th cross-interrogatory he says:

The levee company occupied that portion of Levee street known
484 as "the levee," with its wharves and landings, extending say from the garrison wall about one thousand feet up the river and along Levee street; and this from about the year 1867 up to the appointment of the receiver, as before stated in answer to direct interrogatories.

Cross-int. 20th. In answer to the 20th cross-interrogatory he says: The levee company occupied the river front to the extent I have stated in my next proceeding answer and for the time I have there stated, though at times they could not use all of it on account of damage by floods in the river.

Cross-int. 21st. In answer to 21st cross-interrogatory he says: The levee company kept the levee in such repair as the floods in the river permitted; their works being sometime' damaged or swept away. But the said company always had men in its employ engaged in trying to keep the levee in repair up to the appointment of a receiver as aforesaid. I do not recollect of any time it was in disuse up to the appointment of the receiver. I do not know whether the receiver now collects levee dues or not. There is no wharf attached to the said Levee street at the present time and has not been for nearly a year. I do not
485 know whether the said levee company ever did buy or expropriate any land under its charter.

Cross-int. 22nd. In answer to 22nd cross-interrogatory he says: The works referred to have never been entirely within Levee street. The work or causeway lately constructed by the receiver does not wholly lie within 12th street and its continuation down to the margin of the river at the landing.

Cross-int. 23rd. In answer to the 23rd cross-interrogatory he says: I made the map referred to at the request of the defendants in this cause. The outer lines of the Espiritu Santo grant & the location of Browns-

ville and Matamoros were taken from the county record map. The lines of the middle portion marked "Maria Josefa Cavazos claim" are taken from a map said to be made by George Lyons, former surveyor of this county, furnished me by the defendant in this cause. The city company's lines marked "Stillman and Hale's claim" were made from the deed of conveyance from Maria Josefa Cavazos to Basse & Hord, as surveyed by Felix Blucher, surveyor; and the lines of the Garrison grounds are taken from a map made by me for the Gover'ment of the United States from an actual survey made by me by order of
486 General C. C. Auger, United States Army, then commanding the Department of Texas.

Cross int. 26th and last. In answer to the 26th and last cross-interrogatory (the 24th and 25th being addressed to Adolphus Glaevecke, separately), he says: I do not now remember anything further of benefit to the plaintiffs herein.

H. M. FIELD.

I certify to the correctness of the foregoing deposition.

WILLIAM KELLY,
U. S. Commissioner Eastern Dist. of Texas.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS AND OTHERS.

Suit pending in the U. S. circuit court in the eastern district of Texas, at Galveston, Texas, transferred from Brownsville.

The undersigned, a commissioner appointed by mutual consent of the parties in the said cause to examine H. M. Field, a witness in this cause, respectfully reports that the said witness attended before me at my office in the city of Brownsville, Texas, and, being publicly sworn by me to tell the truth, the whole truth, and nothing but the truth,
487 was examined by me on the interrogatories and cross-interrogatories hereunto annexed and herewith returned, neither the counsel for the plaintiff nor for the defendants being present; that the answers of the said witness thereto are truly stated in the accompanying depositions signed by him, and that no objections were made to the answers or proceedings by either side.

In testimony whereof I have hereunto set my hand and seal, at office in Brownsville, Texas, this seventeenth day of June, A. D. 1875.

WILLIAM KELLY,
U. S. Commissioner Eastern District of Texas.

Commissioner's fees:

Oath	10
40 folios, @ 20 c	8 00
Commissioner's attendance, 2 d'ys	6 00
	$14 10

W. K.

Deposition of Antonio Yznaga.—Answers to direct int'g's.

THE UNITED STATES OF AMERICA,
Eastern District of Texas, in the 5th Circuit:

THE CITY OF BROWNSVILLE
vs.
MARIE JOSEFA CAVAZOS AND OTHERS. } No. 202.

Suit pending in the United States circuit court in the eastern
488 district of Tex., at Galveston, transferred from Brownsville.

Answers and depositions of Antonio Yznaga, a resident of Cameron County, Texas, to the accompanying original interrogatories and cross-interrogatories propounded to him in the above-entitled cause, before William Kelly, duly appointed by the United States circuit court for the eastern district of Texas a United States commissioner, and duly qualified as such commissioner in accordance with law, and authorized to take depositions in the above-entitled cause in accordance with a stipulation entered into by the parties in said cause, acting by and through their respective attorneys therein, on file in the said court.

And the said Antonio Yznaga, having first been by me duly examined, cautioned, and sworn according to law, deposes and says and answers as follows:

1st. To the first direct interrogatory he answers: My name is Antonio Yznaga; my age is fifty-four years; my residence, Brownsville, Cameron County, Texas; my occupation, that of a stock-raiser. I have resided in Cameron County for twenty-five years.

2nd. To the 2nd direct interrogatory he answers: I do know
489 the lands enquired about; they lie on the left bank of the Rio Grande, in Cameron County, Tex. I know the map attached to these interrogatories; it was made by H. M. Field. It is a correct map of the lands described therein.

3rd. In answer to the 3rd interrogatory he says: I know the land comprised within the middle portion of the said Espiritu Santo grant, and it includes the city of Brownsville and the garrison grounds of Fort Brown, Texas.

4th. In answer to the 4th interrogatory he says: The said middle portion of the Espiritu Santo grant extends about three miles above and three miles below the garrison grounds, about one mile below the lower or easterly line of the city of Brownsville, the upper or western line of the city of Brownsville strikes the western line of the said middle portion of the said Espiritu Santo grant, which said middle portion extends back from the city of Brownsville north about 33 miles; the Rio Grande is the southern boundary.

5th. In answer to the 5th interrogatory he says: Maria Josefa Cavazos, Rafael Garcia Cavazos, and the Brownsville Land Company.
490 I do not know Maria Josefa Cavazos personally. I have known the persons composing the Brownsville Land Company ever since 1850; I came here in 1850. They have had possession of said lands ever since I arrived here. The taxes on a portion of said lands known as the Stillman & Hale claim have been assessed on the Brownsville Land Company, and paid by them. I cannot say of my own knowledge who paid taxes on the remainder of the said middle portion.

6th. In answer to the 6th interrogatory he says: I have known at different times the following persons composing the Brownsville Land Company: Charles Stillman, Samuel A. Beldon, Elisha Basse, Robert H. Hord, Mifflin Kenedy, and William G. Hale. Charles Stillman resides in New York; Samuel A. Beldon died in New York; Elisha Basse resides at Denver City, Colo.; Robert H. Hord died is Mississippi; Mifflin Kenedy lives in Nueces County, Texas, and William G. Hale in New Orleans. I have known them all since 1850, except William G. Hale, whom I first knew in 1851 or 1852, and they held possession of a portion of the Espiritu Santo grant, within the limits of the city of Brownsville, a part of the same being laid out in blocks and lots.

491 7th. In answer to the 7th interrogatory he says: They were in possession of a portion of it when I first came to Brownsville in 1850, and they have held it ever since until a receiver was appointed in 1872.

8th. In answer to the 8th interrogatory he says: In the year 1862, I held the office of justice of the peace in the city of Brownsville, Texas. I have held no other office.

9th. In answer to the 9th interrogatory he says: I do not know of any of my own knowledge.

10th. In answer to the 10th interrogatory he says: The Brownsville Land Company and those holding under them have held possession of the city lots and other landed portions of the city of Brownsville within the Stillman & Hale claim, excepting a small portion held by John Castaing. I do not know that the city of Brownsville has exercised any acts of ownership over said lands, except in giving quitclaim titles within the last few months, nor do I know of its ever having made any donations of said lands for any purpose whatever.

492 11th. In answer to the 11th interrogatory he says: The land occupied as the new cemetery was donated by Charles Stillman, Samuel A. Beldon, and William G. Hale, to be used as a public burying ground; a portion of it (lots 5, 6, 7, 8, and portions of lots 9 and 4, in block 130, as surveyed by E. R. Hord, city surveyor) was dedicated to the Hebrew Benevolent Society on the 21st of May, 1868, and was donated for that purpose by the said Stillman, Beldon, and Hale to B. Kowalski, J. Alexander, B. Kunagel, George Myers, and Adolphus Marks, as trustees; and lot No. 7, in block 96, was also donated by the said Stillman, Beldon & Hale to Brevet Major-General Alexander McD. McCook, U. S. Army, William Neale, Jeremiah Galvan, and Edward Downey, as trustees, on the 4th of February, 1869, as a site for a school house for the colored children of Brownsville. The Brownsville Land Company also laid out and dedicated Washington Square as a public square.

12th. In answer to the 12th interrogatory he says: The United States Gover'ment, by its troops, has been in possession of the garrison grounds—they were occupying them when I came here in 1850; from that time to the present they have so occupied them, with the exception of one or two short intervals, but by what authority or agreement

493 I do not know, nor do I know that the city of Brownsville ever made any claim or demand for possession or for payment of rents, or made any proposition to sell the same, or demanded the purchase thereof by or from the United States Government.

13th. In answer to the 13th interrogatory he says: The Brownsville Land Company and the Brownsville Levee Company have had possession and control of the levee ever since I have known it, for the purposes of running ferries and building wharves. Charles Stillman, Samuel A.

Beldon, and William G. Hale assumed the control and possession of Levee street, and the expenditures for the protection thereof were made by them. I do not remember that the city of Brownsville ever interfered to prevent such control and protection.

14th. In answer to the 14th and last direct interrogatory he says: During the time I was employed by the Brownsville Land Company, from April, 1865, to September, 1871, and by the Brownsville Levee Company, from November, 1868, to September, 1871, I never was interfered with by any person or party in the sale of lots and collecting the amounts they were sold for, nor in renting and leasing of lots and
494 parcels of lands, and collecting the rents therefor, nor in collecting the rents and revenues of the ferries and wharves for account of said companies, except the interval during which the United States Government, by its military authorities, held the ferries; neither have I ever been interfered with during the periods aforesaid in the construction of wharves and works for the use of the levee company, and for the protection of the levee at Brownsville. Nothing further of interest to the defendants occurs to me now.

WILLIAM KELLY,
U. S. Commissioner, E. D. T.

Deposition of Antonio Yznaga.—Answers to cross int'g's.

The annexed cross-interrogatories were now propounded to the witness in their due order and by him answered as follows:

Cross-int. 1st. In answer to the first cross-interrogatory, he says: I know the lands enquired about lie on the left bank of the Rio Grande because I have travelled over a large portion of them and visited some of the ranchos claimed by Sabas Cavazos, Antonio Tijerina, and other heirs of said lands as belonging to them and composing a part of the Espiritu Santo grant. I have seen the patent as recorded in the
495 county clerk's office of Cameron County, in book H, pages 300 to 301. It was issued in 1859, and includes the lands comprised within the city of Brownsville. I saw the original patent about three weeks ago; it was shown to me by Mr. Thomas Carson. Henry M. Field told me he made the map attached to these interrogatories.

Cross int. 2nd. In answer to the 2nd cross-interrogatory he says: I mean that the city of Brownsville and the garrison grounds are comprised within the middle portion of the Espiritu Santo grant, in accordance with the patent referred to in my answer to cross-interrogatory one; I also know it from general reputation and from maps that I have seen.

Cross int. 3rd. In answer to 3rd cross-interrogatory he says: I mean the corporate limits of the city. My information is derived from maps I have seen, personal knowledge and general reputation.

Cross-int. 4th. In answer to 4th cross interrogatory he says: I know where Mansfield was; I do not know positively how far westerly from there the limits of the city of Brownsville extends; from maps I have seen and general reputation, I would say three miles. The river
496 front in said intermediate space is occupied by labor-holders; I do not know all of them. I know Encarnacion Salas, Cecelio Salas, Nestor Garcia, and Lino Barcenas; I know from general repute that they hold under titles from the city of Matamoras.

Cross-int. 5th. In answer to the 5th cross-interrogatory he says: I should say about three miles. There are labor holders; I do not know who they are nor from whom they derive their tenures.

Cross-int. 6th. In answer to the 6th cross-interrogatory he says: I was

an employee of the Brownsville Land Company for several years, and for some time had the management of its affairs here; I have been employed by some of the parties composing the said land company at different times from 1850 to 1871, and also from information derived from John Treanor, agent of Donña Maria Josefa Cavazos.

Cross-int. 7th. In answer to the 7th cross-interrogatory he says: I do not know all the places, labors, ranchos and localities on the river front of the middle portion of the Espiritu Santo Grant. The following are notor'ously some of them: Santa Rosalia, Los Tomates, Fort Brown, Brownsville, Freeport, las Prietos, and the labors claimed by
497 Encarnacion Salis, Ceclio Salas, Nestor Garcia, and Lino Barcenas. I have known the Brownsville Land Company in possession of a section from the garrison fence to Nestor Garcia's labor since 1850. They held their tenure from Rafael Garcia Cavazos and Maria Josefa Cavazos. I have known the Salis, Barcenas, and Garcia above named since 1852. I do not know how long they have had possession of those labors; they had possession of them when I first knew them. I know from general repute that they derive their tenures from labor titles from the city of Matamoros; I know that the land company has paid taxes; I do not know that the others have done so; I have known Maria Josefa Cavazos to possess, within the corporate limits of the city of Brownsville, several lots adjoining the easterly line of the lands in possession of the Brownsville Land Company, and north of the garrison fence, being the northeast corner of the said corporate limits of the said city of Brownsville. I know that she exercised rights of ownership over them, from the fact that I have been upon the premises and the tenents have told me that they rented the same from John Treanor and Edward Dougherty, who were generally known as her agents. She held and possessed the
498 premises described above during the time that I collected the rents for lots belonging to the Brownsville Land Company, that is from 1869 to Sept., 1871. This I know of my own knowledge, and I also know by repute and so believe that she inherited those lands and has always been possessed of them. Where the dividing lines of the lands ran through a lot the tenant occupying it would pay the Brownsville Land Company one half the rent, and the other half to the agent or agents of Donña Maria Josefa Cavazos.

Cross-int. 8th. In answer to cross-interrogatory 8, he says: In the sense that the Brownsville Land Company exercised ownership and control over the lands referred to; that they sold lots and the vendees took possession and erected buildings on them, and occupied the same without hindrance from any other claimant or claimants. I refer to the lands claimed by the Brownsville Land Company as marked on the map referred to as being annexed to the direct interrogatories herewith, except a small portion claimed adversely by John Castaing and for which there is a suit pending; also that they rented a large number of lots and collected the rents for the same without interference. They also as owners of the river front ran ferries across the Rio Grande. I have
499 given above in answer to this 8th cross-interrogatory the definition of the term possession as I understand it; any person or persons exercising ownership and control over a piece or tract of land is in actual possession of it, and that the Brownsville Land Company has exercised these acts I know, because as their agent I have sold lots in their names and collected the money for which they were sold; I have rented and leased lots and collected the rents in their names, and I have also collected the revenues from the ferries which I have leased in

their names. The exercise of all these rights is possession as I apply it to the lands in question.

Cross-int. 9th. In answer to the 9th cross interrogatory, he says: I do not know the quantity of lands embraced in the middle portion of the Espiritu Santo grant, neither that of the town tract of the city of Brownsville. That embraced in the claim of the defendants Stillman & Hale is about eighteen hundred acres. The corporate limits of the city of Brownsville is larger than the claim of Stillman & Hale.

Cross-int. 10th. In answer to the 10th cross-interrogatory, he says: I do not know.

Cross-int. 11th. In answer to the 11th cross-interrogatory, he
500 says: I do not know that any of the parties named in this cross-interrogatory have paid taxes except the Brownsville Land Company. I do not know that Rosa Flores holds any labor adversely to the said land company. I do not know that she pays taxes. John Castaing holds a labor adversely to the land company with the exception of the square where his house or homestead stands on said labor, and which was purchased of the said land company in the name of his wife, Maria Ignacio Moya. I do not know whether John Castaing pays taxes.

Cross-int. 12th. In answer to the 12th cross-interrogatory, he says: I do not pretend to give the names of all persons who occupy lots and other landed portions of the city of Brownsville, or how they hold the same. They are too many. At the time I collected rents for the Brownsville Land Company there were near two hundred of them leased. The nature of the land outside the body of the town and away from the river front is chapparal and prairie, and most of it is unineloseel and nearly uninhabited. I do not know that the land company as such have fenced in any portion of the lands claimed by them.

Cross-int. 13th. In answer to the 13th cross interrogatory he
501 says: I do not know where the defendants Cavazos and Hale were, from November, 1863, to the middle of 1866; Stillman was in Matamoras and in New York. I do not know who was in charge of the lands of Maria Josefa Cavazos during that time; Samuel A. Belden kept the books and papers of the Brownsville Land Company, and had charge of the lands claimed by said land company, except during the time that they were held by the military authorities of the United States. I had charge of the ferries from April or May, 1865, till October 18th, 1871, with the exception of the time when the U. S. provost marshal took possession of them, but I cannot say whether it was the Freedmen's bureau or not. The defendants had continuous possession by themselves or their agents during that time, except as already stated when the military authorities had them in charge. I do not know that the lands claimed by Cavazos, outside the garrison grounds were ever interfered with, or held by the Freedmen's bureau, or any military authority, during the time specified. I have made no mention of any pretended possession by said land company, or the defendant Cavazos; when I say that I have known they were in possession of said land since 1850, I include the period of time between the dates above mentioned.

502 Cross-int. 14th. In answer to the 14th cross-interrogatory he says: I do since it was built; Suzeman and Mr Conagh were the builders. It was built on lands of the Brownsville Land Company, and on an alley of the city of Brownsville. It was established by the city authorities. The city of Brownsville has been in possession of it since its construction. The city claims the ownership, and collects the revenues from it; the revenue was applied in the first place to the

an employee of the Brownsville Land Company for several years, and for some time had the management of its affairs here; I have been employed by some of the parties composing the said land company at different times from 1850 to 1871, and also from information derived from John Treanor, agent of Doña Maria Josefa Cavazos.

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payment of the cost of building, and afterwards and is now applied to general city purposes. The city of Brownsville does claim the ownership of said market and the land on which it stands, together with the plaza around it, under its grant from the State of Texas. It has also n'toriously claimed the ownership of the land within the corporate limits since the time of its first charter; It has defended and prosecuted suits at law, in defence and assertion of its claim to the title to said lands under its grant from the State of Texas. I was not here in January, 1850, and do not know of its enjoying said ferries on the 24th of said month, or at any time previous thereto. The city of Brownsville did use a block of ground as a public burying ground between 11th and 12th street, several blocks from the river, for several years; that one was the only one used as a burying ground. Burials were made
503 in it until the land now occupied by the new burying grounds was dedicated for that purpose by the Brownsville Land Company. The city of Brownsville has had control of the general repairing grading, draining, and management of the streets, since they were first laid out and dedicated to the city by the Brownsville Land Company.

Cross int. 15th. In answer to the 15th cross-interrogatory he says: I have read the titles of donations.

Cross int. 16th. In answer to the 16th cross interrogatory he says: I do not state by what authority the United States holds the garrison. I do not know of my own knowledge what proceedings the city of Brownsville may have instituted with regard to the garrison grounds at any time. I do not know that the Government of the United States has ever paid rent for the use of the garrison.

Cross-int. 17th. In answer to the 17th cross-interrogatory he says: I have known Levee street since 1850. I do not know when it was first laid out. It is generally supposed that it was laid out at the same time as the other streets. Levee street and the levee are not considered one and the same thing. Levee street is considered that portion from
504 the 12th street back, and the levee from the garrison wall along the river front to the foot of Twelfth street. It has been used as a public thoroughfare for foot passengers and vehicles since I have known it, with the exception of that portion which at times the encroachments of the river have washed away and suspended travel until it was refilled and repaired by the Brownsville Land Company and the Levee Company.

Cross-int. 18th. In answer to cross interrogatory 18th he says: I do not know.

Cross-int. 19th. In answer to cross-interrogatory 19th he says: The Brownsville Levee Company occupied the whole river front of the city of Brownsville from the quartermaster's fence to the foot of Eleventh st. in an almost continuous line of works from the month of November, 1868, to the time that a receiver was appointed. The said Levee Company also constructed and owned other works further up the river front, to protect the works of the "levee" from being washed away. The distance between Eleventh street and the quartermaster's fence is about 1,200 feet; adojining the quartermaster's fence there is a wharf, which was used as a steamboat landing from 1868 to 1874, and the said Levee Company collected wharfage on the "m'd'ze" landed upon the
505 same until a receiver was appointed. They also had another between 12th and 13th st., which was used for the same purpose.

Cross-int. 20th. In answer to the 20th cross-interrogatory he says Yes; they had two wharves, as mentioned in the next preceding cross-

interrogatory, and occupied other portions of the levee with materials for constructions of their works and for repairs of the same, from January, 1869, to August, 1872. I do not remember of any open space unoccupied by the Levee Company's works from the quartermaster's fence to opposite the middle of the block between 12th and 11th st., a distance of about ten hundred and fifty feet, except the space occupied by the ferry landing.

Cross int. 21st. In answer to the 21st cross-interrogatory he says: The Levee Company has at all times kept the levee works in as good repair as the periodical freshets of the Rio Grande would allow of up to the time the receiver was appointed. There are no wharves to present, and no repairs being done on what is standing of the works. I do not know if the receiver collects levee dues. I do not know how long it is since there has been no wharf. I do not know that the Levee
506 Company ever expropriated or purchased any lands for the use of its franchise.

Cross-int. 22nd. In answer to the 22nd cross-interrogatory he says: The works of the levee company have not been erected entirely within Levee street of said city. Some of the anchors have been laid within the levee, but all of the principal works were put up outside of the limits of said thoroughfare. The causeway referred to is partially on the continuation of 12th street, which strikes the river some distance above the landing, on land made by accretion, promoted or caused by the works constructed above there by the said levee company.

Cross-int. 23d is addressed separately to H. M. Field and cross-interrogatories 24 & 25th are addressed to Adolphus Glaevecke.

Cross 26th. In answer to cross-interrogatory 26th and last he says: I do not remember any other matter that in my opinion may be benefit of the plaintiff herein.

A. YZNAGA.

I certify to the correctness of the foregoing deposition.

WILLIAM KELLY,
U. S. Commissioner Eastern Dist. of Texas.

507 THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS AND OTHERS.

Suit pending in the U. S. circuit court for the eastern dist. of Texas, in Galveston, Texas. Transferred from Brownsville.

To the honorable circuit court for the eastern dist. of Texas, at Galveston, Texas:

The undersigned, a commissioner appointed by mutual consent of the parties in the said *in the said* cause to examine Antonio Yznaga, a witness in this cause, respectfully report: That the said witness attended before me at my office in the city of Brownsville, Texas, and being publicly sworn by me to tell the truth, the whole truth, and nothing but the truth, was examined by me on the interrogatories and cross-interrogatories hereunto annexed and herewith returned, neither the counsel for plaintiff nor for the defendant being present. That the answers of the said witnesses thereto are truly stated in the accompanying depositions signed by him, and that no objections were made to the answers or proceedings by either side. In testimony whereof I have hereunto

set my hand and seal at office in Brownsville, Texas, this 18th day of June, A. D. 1875.

WILLIAM KELLY,
U. S. Commissioner Eastern Dist. of Texas.

508 Commissioner's fees:

Oath	10
50 folios @ 20c	10 00
Commissioners' attendance, 2 days	6 00
	$16 10

W. K.

The foregoing depositions indorsed as follows:

"Publication made May 20th, '76, by consent of parties, in writing.
"C. DART, *Clerk.*"

"Filed May 20th, '76.
"C. DART, *Clerk.*"

The envelope containing the foregoing dep't'ns indorsed as follows:

Addressed: "Christopher Dart, esq., cl'k of United States circui court, for the eastern district court, Galveston, Tex."

"THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS & OTHERS.

"Depositions of Henry M. Field and Antonio Yznaga, taken by commission, sealed and delivered to Mr. Thomas Carson, a messenger at Brownsville, Tex., this 19th of June, 1875, by me.
"WILLIAM KELLY,
"*U. S. Commissioner Eastern Dist. of Tex.*"

"C. L. 887.

"Thomas Carson, being duly sworn, on oath says that he re-
509 ceived this package of depositions from the hands of William Kelly, a commissioner duly appointed by the U. S. circuit court for the eastern district of Texas, the officer before whom the within depositions were taken; that they have not been out of his possession since and have undergone no alteration.
"THOMAS CARSON.

"Sworn to and subscribed before me, June 30th, 1875.
"C. DART, *Clerk.*"

"Received from the hands of Thos. Carson June 30th, 1875.
"C. DART, *Clerk.*"

"Filed June 30th, 1875.
"C. DART, *Clerk.*"

"We agree that these depositions may now be opened by the clerk.
"May 20th, '76.
"JAS. R. COX,
"*For Defendants.*
"POWERS & MAXAN,
"*For Pl't'ff.*"

"Publication made May 20th, '76, by consent of parties.
"C. DART, *Clerk.*"

510 *Statement of facts continued.—Proof of heirship of Stillman & Hale's heirs.*

The defendants then proved by the witness James R. Cox that Charles Stillman died December 18, 1875, and William G. Hale died January 7, 1876; also that their respective widows and children are the persons who are now parties defendant in this case.

Statement of facts continued.—Extract from Watrous impeachment book, pages 1265 to 1268, inclusive. (*D.* 17.)

And the defendants also introduced and read in evidence the following documents:

Extract from Watrous impeachment book, pages 1265 to 1268, inclusive.

COUNCIL CHAMBER AND PORT OF MATAMORAS.

The government of this department in office the 22nd day of May, 1835, communicated to the illustrious ayuntamiento of this city the following:

"This government yesterday received the following advice:

"MOST EXCELLENT SIR: Concerning the advice which being understood according to the solicitude of the ayuntamiento of Matamoras, as applied solely to the concession of lands for ejidos, and not to include any lands which is comprised within the actual boundary of the town.

"Your excellency will please authorize to proceed to the survey of the exidos, for which your excellency will appoint one commissioner to attend to the business in all its parts; and with the approval of the ayuntamiento and those interested, your excellency will appoint a surveyor to survey the ejidos and to place the landmarks, previous to which being
511 done, however, you will inform yourself, through the ayuntamiento, if to any of these lands there are private owners, who should be indemnified for same according to law; having concluded this, you will render an account of the same to the superior court for their action upon it. The cost for the assignment of the exidos will be paid from the municipal funds of Matamoras; and should the existing funds be insufficient, the ayuntamiento will deliberate upon the matter and propose accordingly to the government."

In conformity with which I inform your honors that, by appointing one of the regular surveyors, he will proceed to the demarcation of exidos from the lands designated, with the assistance of the syndic attorney of that illustrious corporation, who is the person commissioned by the government to assist in this business until finished according to the instructions contained in the despost, which your honors should transmit to him; and this corporation sends you this copy, that, upon receipt of the same you may act accordingly, carrying into effect the survey of exidos in this city within the *the* limits authorized. Such was the decree of this ayuntamiento, in ordinary session of the 5th instant, done at the suggestion of various citizens, and having previously cited to appear those interested in the matter.

God and liberty. Matamoras, June 15th, 1841.

FRANCISCO VALDEZ,
President.

M. GALINDO,
Secretary.

512 To JUAN LANGORIA LERNA,
3rd Constitutional Alcalde:

CITY OF MATAMORAS, *June* 15, 1841.

Comply with and execute the wishes of the superior officers, according to the foregoing document; and in order to proceed to the survey of exidos, as commanded, you will cite those persons who are interested in the land to appear, and say if they approve the appointment of Guillermo O'Dochrte, surveyor, to survey the same. I, the citizen Juan Langoria y Lerna, third constitutional alcalde, decreed, ordered, and signed my name with witnesses of assistencia for the treasurer's office.

Attest:

JUAN LONGORIA Y LERNA.

To MELCHOR FONSECA.

On the same day were issued the summons, in accordance with the foregoing acts.

Attest:

LONGORIA Y LERNA.

To MELCHOR FONSECA.

On the same day, month and year, according to summons, appeared before me Marcos Galindo, attorney in fact of Madame Rita Giron and Josie Maria, of the same name, whom I know, and to whom I give faith, and being notified by me of the foregoing act, said that he understood the notice, and approved of the appointment of Guillermo de O'Dochorte as surveyor for the exidos; whereupon he signed his name in my presence.

Attest:

513 LONGORIA Y LERNA.

To MELCHOR FONSECA, M. GILANDO.

On same day and date appeared before me, according to summons, Juan Tigerina, to whom personally I made known the antecedent act, whereupon he said that he understood the same, and that he conforms to the appointment for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
JUAN JOSÉ TIGERINA.

To MELCHOR FONSECA.

In the aforesaid city, on the 21st day of the said month and year, appeared before me, according to summons, Manuel de la Garza Soza, personally known to me, and in whom I have faith, and whom I notified in like manner, fully explaining the same to him; whereupon he said that he understood it, and approved of the appointment for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
MANUEL DE LA GROZA SOZA.

To MELCHOR FONSECA.

In the aforesaid city, on the 22nd day of the said month, appeared before me Macedonio Capistran, representative of his mother, Margarita de la Groza, to whom I made known the anteceding act, and ex-

plaining the same. He said that he approved of the appointment of surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
MACEDONIO CAPISTRAN.

To MELCHOR FONSECA.

On same day appeared before me Vicente Hinojosa, to whom I
514 give credit, and made known the said act, and explained the same. He said that he heard it, and approved of the nomination for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
VICENTE HINOJOSA.

To MELCHOR FONSECA.

In continuance, personally appeared before me Rafael G. Cavazos, whom I know, and in whom I have faith, and to whom I made known the said act and explained the same. He said that he heard me, and approved of the nomination for surveyor, and he signed his name.

Attest:

LONGORIA Y LERNA.
RAFAEL GARCIA CAVAZOS.

To MELCHOR FONSECA.

In continuation, appeared before Rafael Gonzales, to whom I give faith, and made known and explained said act. He said that he heard me, and approved the nomination for surveyor, but did not sign his name, not knowing how to write.

Attest:

LONGORIA Y LERNA.

To MELCHOR FONSECA.

In the aforesaid city, on the twenty-eighth day of the aforesaid month and year, I notified Rafail Garcia Hinojosa, teacher of the minors of Rafael Cisernos, of the aforesaid act, and explained the same to him. He said he heard me, approved the nomination for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
RAFAEL GARCIA.

To MELCHOR FONSECA.

515 In the aforesaid city, on the thirtieth day of the aforesaid month and year, I notified in the same manner Macedonio Capistran, who presented himself before me as the representative of Ventura Graza, and who said that he heard me, and approved of the nomination for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
MACEDONIA CAPISTRAN.

To MELCHOR FONSECA.

On the same day and date appeared before me Acadio Salinas, heir of Rafael Cisceno, deceased, to whom I made known and explained said

act; he said he heard me and approved the appointment for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
ACADIA SALINAS.

To MELCHOR FONSECA.

I immediately after informed Juan L. y Garza, representative of Ramona de la Garza, of said act, and explained it to him; he said he heard it, and approved of the nomination for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
JUAN LONGORIA.

To MELCHOR FONSECA.

In continuation appeared before me, according to summons, Ignacio Villareal and Marcos Garcia, representing their wives, Josefa and Maria de la Garza, to whom I give faith and notified and explained the said act, and who said that they approved of said appointment for surveyor, and signed their names.

LONGORIO LERNA.
IGNACIO VILLAREAL.
MARCOS GARCIA.

516 To MELCHOR FONSECA.

Without intermission, appeared before me Don Domingo de la Garza, in whom I have faith, and whom I informed of and explained the said act, who said he heard me, and approved of the appointment for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
JOSÉ DOMINGO DE LA GARZA.

To MELCHOR FONSECA.

On the same day, month and year, I notified and explained in the same manner to Calista Portilla, who said that he approved of the appointment for surveyor, and signed his name.

Attest:

LONGORIA Y LERNA.
CALISTO PORTILLA.

To MELCHOR FONSECA.

In continuation appeared before me Guillerno O'Docharte surveyor, in whom I have faith. I notified him of the anteceding act, and of his appointment to survey the lands for the exidos of this city, by decree and in conformity with the wishes of those interested, and having explained the same to him, he said that he accepted, and he did accept the same, swearing by God our Lord and the sign of the cross to perform his duty well and faithfully, according to the best of his ability, and he signed his name with himself and those of my "asistencia."

Attest:

LONGORIA Y LERNA.
GUILLERMO O'DOCKHARTE.

517 Immediately following appeared before me, according to summons, the first syndic attorney of this illustrious ayuntamiento,

Manuel de Porras, to whom personally I made known the act, on three sheets of paper, dated on the 15th of last month, and officially so that part which referred to him, and he, being acquainted with the same, said: That conforming strictly with the appointment as commissioner to assist in the survey and demarcation of the lands of the ejidos of this city with which the superior government of this department had seen fit to honor him, he accepted, and he did accept of the same, and would carry into effect the same, and when it may please the judge who knows respecting the said survey. This was his answer, and he signed his name in connection with me and those of my asistencia.

Attest:

LONGORIA Y LERNA.
MANUEL DE PORRAS.

MATAMORAS, *July* 21*st*, 1841.

Having executed all of the notifications which were ordered in the act of three sheets of paper, dated 15th of last month, and there being necessary to assist at this survey two fit persons, as inspectors and receivers, I appoint Domingo Hernandez and Leonardo Espinosa, whom I will notify so that they many accept and swear their exact and faithful performance of their duty. So I command and sign myself
518 the citizen Juan Longoria y Lerna, 3rd constitutional alcalde, with those of my asistencia, to which I give faith.

JUAN LONGORIA Y LERNA.

According to summons, appeared before me Domingo Hernandez and Leonardo Espinosa, in whom I have faith, and to whom I made known the anteceding act; they understanding the same, said that they heard me, and accepted of their appointment, swearing by God and the sign of the sacred cross to perform well and faithfully their duty assigned, according to the best of their ability, and signed their names with me and those of my asistencia, to which I give faith.

LONGORIA Y LERNA.
DOMINGO HERNANDEZ,
LEONARDO ESPINOSO.

MATAMORAS, *July* 22*nd*, 1841.

Having to communicate to morrow the demarcation and surveys of the lands of the exidos of this city, I cite, by means of instant summons, the residents of and shareholders for the portions they have to verify. So I ordered and signed my name to as the citizen Juan Longoria y Lerna, 3rd constitutional alcalde, with those of my asistencia, to whom I give faith. Dated as ordered.

LONGORIA Y LERNA.

Attest:

LONGORIA Y LERNA.

A true copy of the original deposited in the archives of the illustrious ayuntamiento of this city, which is in my charge, and to which I refer; and by decree of the same corporation, dated 10th of November last, and in virtue of the petition of those interested, I issued this
519 present copy, which is written upon six useful sheets of the fourth seal, for the current biennial years.

In witness whereof I sign my in this city of Matamoras, this 20th day of December, one thousand eight hundred and forty-nine.

JUAN PRADO,
Secretary pro tem.

Statement of facts continued.—Reasons of objection of plaintiff to proceedings & action in petition of Jno. Treanor and decree of government, and petition of Jno. Treanor, &c. (D. 18.)

And thereupon the defendants offered to read in evidence the following documents, to which the plaintiff objected, for the following reasons:

1. Irrelevancy and incompetency to sustain the issue in this case.

2. That the proceedings and action set forth in said documents were had after the 19th day of December, 1836, when the political authorities of Mexico could take no action to affect the right of the State of Texas to the land in question.

3. That the said proceedings & action were coram non judice as regards the State of Texas and its grantees.

4. That said proceedings and action were political in their character and did not nor could affect the rights of the State of Texas and its grantees to said land.

5. That the government of Tamaulipas, at the time of said proceedings and action, had no jurisdiction over the subject-matter, to wit, the lands in question, and could not adjudicate away the sovereign and political rights of Texas to its lands by any proceedings to which the latter was not a party.

520 6. That the State of Texas having succeeded Tamaulipas in the ownership of said lands on the 19th day of December, 1836, the said State of Tamaulipas is estopped from denying its title to said lands at that time, and from doing or saying anything subsequent to said date which may impeach or adversely affect the title which the State of Texas acquired from Tamaulipas in said lands.

7. The said proceedings and action are res inter alios acta as to the plaintiff.

All of which objections of said plaintiff were overruled, to which ruling of the court the plaintiff then and there excepted, and the said documents were read in evidence, as follows:

Petition of John Treanor to congress of Tamaulipas.

Petition of John Treanor to congress of Tamaulipas. Report of committee of ayuntamiento the executive. Report of executive to congress of Tamaulipas. Report of committee of congress.

Original records and archives of Victoria destroyed by the French in the war of Maximilian.

Fourth seal. Twelve & a half cents.

COUNCIL CHAMBER OF THE ILLUSTRIOUS AYUNTAMIENTO.

EXCELLENT SIR: Since the arrival in this city of the exchange of the treaty of peace, which put a stop to the war between Mexico and the United States, and marked out the boundaries of both republics, several propositions have been made to this corporation relative to the

521 purchase of the right of property which it had in the past of the ejidos of the city on the other side of the river, right which the municipality believes it cannot hold, because it would neither be possible for her to collect the imposts on the lands of that part nor does she see how she could make any emphyteutic (enfiteuta) contracts on them when possessed by another nation. This consideration has made

the ayuntamiento believe that it ought to dispose of it to the highest bidder, supposing that her right to it is acknowledged, but she would not do it without consulting your excellency, no tto give rise thereby to any reclamation as contrary to the treaty of peace, and in virtue thereof resolved, in ordinary session of the 26th inst., that your excellency be applied to for the consultation to which I refer, as I have the honor of doing, repeating the assurances (securities) of my attention and esteem.

God and liberty. Matamoras, August twenty-eight, of one thousand eight hundred and forty-eight.

FRANCISCO VALDEZ,
President.
JOAQUIN ACQUELLES,
Secretary.

His excellency the governor of this State.

Fourth seal, twelve and a half cents. Years eighteen hundred and forty-eight and eighteen hundred and forty nine.

MOST EXCELLENT GOVERNOR: Don Juan Treanor, citizen of Matamoras and residing here, in the name and with ample power of attorney from Don Rafael Garcia Cavazos, appear before your excel-
522 lency and say, that necessity compels me come and seek protection against the acts which the illustrious ayuntamiento of that port is dictating to the injury of the interest of my client, and to the no less violation of the constitution and the laws and insult to truth, that purposely confounding matters pretends to involve in its right the disposing as its own of some lands that are the exclusive property of my party (clien'). The first testimony which I present proves the primitive title of acquisition of the potrero of the Espiritu Santo made in favor of the ancestors of my client, with which right of possession according to the thirteenth clause of her will, which I present, likewise Doña Francisca Cavazos disposed of it, and in it appears, by the fourth clause, the appointment of Doña Josefa Cavazos as heir, this lady being the wife of my client. The same appears from the seventeenth clause of the will of Don Blas de la Garza, husband of Da. Francisca, in which one-fifth is bequeathed to the said Da. Josefa; and lastly your excellency see by the instrument of partition made between the heirs of Da. Francisca that ten sitios of those same of the agostadero of the Espiritu Santo are adjudicated to Doña Josefa in payment. After a right of property so clearly and legally demonstrated, it appears that without a violent
523 despoliation, and even more without transgressing, no individual or corporation can dispose of it; notwithstanding the ayuntamiento of Matamoras, confounding surely facts in now to sell this to North American individuals under without doubt that these may be ejidos, when these have never been measured, as the government knows, and even in case of considering them so, the labores and other landed property here made would always be a private property of which the ayuntamiento could not dispose of. Therefore, if neither government itself cannot make the expropriation only for causes of public utility, and there does not appear to be merit of it, and even considered in a political view as it is meditated to sell to North Americans—if there is the indisputable right of property of my party client from the legal titles presented, neither can there be a moment doubt of the right in which I am to be protected in the right of property and possession of

those sitios. I will not make merit, your honor, of the constancy with which my party has suffered the consequences of the war, neither will I do it of the desition with which I, myself, retired of Matehuala from the commencement of the war, always following the national cause. The subject is an act of justice and I simple adhere to it, to pray for
524 it from this government in virtue thereof. I pray your honor that in view of all the documents presented which prove my property, I demand that it be returne' to me, to protect me in the possession of the property of the agostaderos del Espiritu Santo, declaring that if the illustrious ayuntamiento believes itself entitled to any right to come and deduce it before your excellency or before competent tribunal as may the case. It is grant and justice that I ask.

City of Victoria, September 7th, eighteen hundred and forty-eight.

JUAN TREANOR.

To the governor of the State of Tamaulipas.

City of Victoria, September seventh, eighteen hundred and forty-eight.

Let the illustrious ayuntamiento of Matamoras give information of what occurs in this particular, and mean while I will suspend the alienation of the lands to which this party considers himself entitled.

FERNANDEZ.

Doctor RAMON FRANCISCO VALDEZ:

EXCELLENT SIR: The committee which this ayuntamiento appointed to get information and propose the terms of the information of which your excellency asks for in the preceding superior decree in ordinary session of yesterday presented the following:

MOST ILLUSTRIOUS AYUNTAMIENTO: Don Juan Treanor, in representation of his father-in-law, Don Rafael Garcia Cavazos, presented to the government of the State on the seventh inst. a petition
525 seeking protection, as he says, against the acts which you are dictating to the injury of the interests of his client, in violation of the constitution and laws, and with insult to truth, when it endeavors to dispose of as its own some lands that are the exclusive property of his part, under pretext, without doubt, that this might be ejidos. The government, by a decree of the same date, ordered the petition be sent to you to report on its contents, and in the mean time to suspend the alienation of the lands to which it refers; and your honor, to comply with the said superior decree, were pleased to appoint the subscribers a committee to report on the subject, which charge we are going to execute with truth and plainness. Since this town, from its humble denomination of congregation del Refugio, was elevated to the rank of villa, and then to city of Matamoras, by decree of the honorable Congress of the State, its ejidos were marked out and adjudicated as to all of its class; and, although it is certain that said ejidos were not previously indemnified, as the constitution and laws provide, still the illustrious corporation entered at once in possession of them, not only because it was convenient for common interest, but because the supreme government of the State positively ordered it so, leaving to those who believe that they had a right to the lands which had been adjudicated as
526 ejidos to this city their right to apply to the government itself to justify their claim and obtain the corresponding indemnification. If those interested have not applied to the government, notwith-

standing they were called to do it, the faulti s theirs, and they alone can suffer, and not the illustrious ayuntamiento, which for so long a time has been quietly and peaceably possessing its ejidos, giving labores even to those who call themselves their owners in virtue of having denounced and asked for them in form. There cannot be a single case cited that any private or unknown individual has disputed with the illustrious ayuntamiento the right that it has and it has always exercised of granting all of the unimproved lands within the demarcation of its ejidos, which are four square leagues, one in each direction; so that, supposing that Don Juan Treanor, or rather his father-in-law, has a right to any part of the ejidos adjudicated to the city, he cannot on this account embarrass that which the illustrious ayuntamiento has as belonging to its ejidos without applying to the government to show with his titles what part was taken from him for ejidos, and be indemnified according to the laws with respect to the alienation of the ejidos, of which D. Juan Treanor likewise complains of all that happens is that a proposition having been made by a private individual of this city to purchase
527 the part of the ejidos on the other side of the Rio Bravo, your honors consulted of the governments if they could make said sale in consideration of that the illustrious ayuntamiento would always have difficulties to possess it, and that it would be more convenient to sell it to obviate the difficulties and questions which would be dangerous sometimes as being between nations.

For these reasons, and the others which ought not to be hidden to the penetration of your honors, the committee are of opinion that in making our the report which the supreme government of the State asks for relative to the contents of the petition which Don Juan Treanor presented to it, to say to it: First, that the illustrious ayuntamiento of this city is possessing, and has always quietly and peaceably possessed, the lands that were adjudicated to it as ejidos; second, that the individuals that consider themselves with a right to these lands have always had their action free to apply to the government, and that they have been called on to apply and prove the part of the lands which may have been taken from them as ejidos to be duly idemnified; third, that the sale of that part of the ejidos situated on the other side of the Rio Bravo, that is, in Texas, about which the illustrious ayuntamiento consulted, is not only convenient but necessary for many palpable reasons; and that your excellency would please to regard them, notwithstanding the peti-
528 tion of D. Juan Treanor and others that might be made in the same sense.

Committee room of the illustrious ayuntamiento of Matamoras, September twenty-fifth, eighteen hundred and forty-eight.

CHARLES F. GALVERT.
BME. PASSEMENT.

And the three articles with which it concludes having been approved by the corporation, I have the honor of transcribing it entire to your excellency, fulfilling your order.

Council chamber of the illustrious ayuntamiento of Matamoras, September twenty-six, eighteen hundred and forty-eight.

ANDRES SALDANA,
President in turn.
JOAQUIN ACQUELLES,
Secretary.

To the Government of the State of Tamaulipas:

I have the honor to enclose to your excellency to report to the honorable congress a petition of the illustrious ayuntamiento of Matamoras, in which it prays to be allowed to alienate the part of the ejidos which it possessed on the left bank of the Rio Bravo. Enclosed is likewise the claim set up by Don Juan Treanor, with ample power of attorney from Don Rafael Garcia Cavazos, opposing the said sale, and part of the lands granted by order of the authorities to said corporation belonged primitively to his client, and the conditions of the indemnifications provided for by the constitutional law has not as yet been complied with. The government ordered the ayuntamiento to report in relation to the petition of Mr. Treanor; but seeing that the question, from its
529 nature and from the several aspects which it presents, needs ligislative decision to decide it in general, without reference to determined (specific) person, it has abstained from issuing any order and has reserved the decision for the honorable congress, believing that it more properly comes under its attributes. However, the government believes to be its duty to state the reasons which, in its opinion, are opposed to the petition of the ayuntamiento of Matamoras, because it might be the origin of well-founded claims, and these to implore in their aid the stipulations of the treaty of peace celebrated with the United States of the North, it is very important and convenient that the Mexican authorities may not be blamed of the infraction of what has been offered and covenanted in good faith. To form a just opinion of the dispute which exists between the ayuntamiento of Matamoras and the ancient owners of the land which were ordered to be designated as ejidos it is necessary to start from a certain and notorious fact admitted by both parties. The previous indemnification which the constitution provides for in order to dispose of private property for public benefit has never been carried into effect in this case, and this circumstance acts in favor of the primitive proprietors to hinder the projected alienation, because, although the ayuntamiento sustains that it has always been in possession of its ejidos, this
530 reason would serve to prove that it ought not to be interrupted or molested in it by any individual or Mexican authority, but not to sustain that having lost possession of it, in virtue of international arrangements made in virtue of a solemn treaty of peace, that it still has a title of property which it never perfected legally, because one of the requisite conditions which the law of the constitution grants to citizens, such as is the previous indemnification, has not been complied with. The ayuntamiento agrees both in its petition and its report that it cannot and ought not to possess ejidos in foreign territory, and this is sufficient to show that the cause or the motive of public utility, in virtue of which the proprietors were compelled to give up their lands, has ceased. Therefore, if these have not been indemnified previously, they have unquestionable right to recover that which is theirs, as the requisite conditions of the ex*ap*propriation have not been fulfilled; and this is precisely the case in which the right of retrocession or reversion can take effect, re-establishing things to their primitive state, because the right of property should be deferred only to public convenience, and when this ceases, as it does in this case, because the ayuntamiento of Matamoras cannot have ejidos within the territory of the United
531 States of the North, it revives and ought to re-establish all the g'arantees which the laws give to private property. It appears that the ayuntamiento of Matamoras thinks that having lost its ejidos on the left margin of the Rio Bravo, that the alienation of the lands that were assigned to it should likewise be considered as a public con-

venience, even if the corresponding indemnification to the proprietors has not been made. In this the government thinks that there is a mistaken action, because there is a difference between granting common lands to a municipality, even though it be against the right of property, and another very distinct , that of giving authority to a kind of mercantile speculation with the sale of lands for which the owners have not as yet been indemnified.

It is very just to compel private individuals to give up their lands to an ayuntamiento for ejidos; but in no case is it, that if through any weighty event it may not be able to enjoy them to proceed to sell that which in reality does not belong to them, and less in a case in which the want of indemnification revives the right of the proprietors, because the motive with which they were compelled to give up what was legitimately their own has ceased. The government does not believe it necessary to call attention on the nature of the right of property
532 set up by the ayuntamiento, as it is convinced that the honorable congress will know well how to distinguish between private property and community property. The second ought to be classed as public property, and this consideration is sufficient to for'see the danger run by authorizing the ayuntamiento to alienate lands situated to the left of the Bravo.

By the treaty of peace it has been granted to the United States all the land situated within the new boundaries marked out to both republics without other exception than that of the lands belonging to private individuals. Well, then the ayuntamiento of Matamoras itself sees that the alienation it ask' for might give rise to claims as contrary to the treaty of peace, and certainly the Government of the United States, with or without reason, can claim the lands which the ayuntamiento pretends to alienate, considering them as public property and not belonging to private individuals.

In this case the door would be open to diplomatic questions, always injurious and of unfor'seen results, and it is not prudent that the supreme authorities of Tamaulipas give rise to these disagreeable by granting a license which would only be beneficial to the municipal funds of Matamoras, which the better , the most just, and less injuri-
533 ous to the State, would be that the part of the ejidos situated in foreign territory return to the private dominion of its primitive owners, as those have not as yet been indemnified, and violating them by the constitutional condition by which the expropriation was made. In this way the State would be free from the responsibility of indemnifying the proprietors, and would contribute on its part to consolidate and strengthen the peace between two nations that have terminated their differences by means of a solemn treaty which both ought to respect inviolably.

From all these considerations the government concludes, proposing by way initiation the following proposition: "The proprietors whose lands were taken for ejidos of the ayuntamiento of Matamoras not having been indemnified as yet, and as this corporation can neither sell nor possess community property in foreign territory, the lands which the primitive owners were obliged to grant, situated on the left of the Rio Bravo, will return to them by right of reversion without the rentees being able to prescribe them, as their possession has been precarious in the name of the ayuntamiento which granted them as rent; and consequently the State being freed of the responsibility it had of mak-
534 ing the corresponding indemnification." Please to admit the securities of my esteem and very distinguished consideration.

God and liberty.

C. Victoria, October seventeenth, eighteen hundred and forty-eight.

JESUS CARDENAS.

To the Dr. RAMON FRANCISCO VALDEZ.

To the secretaries of the honorable Congress of the State:

SIR: The committee of government has been informed with all the care that the case demands of the documents that the government accompanies with its communication relative to the question about the lands which were granted for ejidos of the ayuntamiento of Matamoras on the left bank of the Rio Bravo, for the alienation of which the said corporation prays to be authorized, as it is impossible for her to continue in possession of them, as they are included within the land which by the treaty of peace celebrated with the United States of the North has been definitely fixed as boundaries of our frontier. This affair, which from its nature and circumstances appeared rather difficult and complicated, has been put by the government in its true light, examining it under the two principal aspects that it presents, and offering a decision *ac*quitable and in conformity to principle of justice and the public convenience; in effect, sir, nothing can be more agreeable
535 to the precepts of our fundamental law than the claim of the primitive proprietors of the lands that were taken for the ejidos, the indemnification which in these cases should have been made previously never has yet been made, and the want of this indispensable requisite destroys the reason which the ayuntamiento of Matamoras set up in favor of its pretention. It is evident that the right of property which it invokes never was perfected, because the privilege which it enjoyed to compel the granting what belonged to others was not absolute but conditional, and if the proprietors could be compelled to dispose themselves for public good of what belonged to them by just title, they had likewise a right to be duly compensated for it. Starting from this principle, and in view of the fact that the ayuntamiento cannot at present enjoy the privilege of having ejidos on the left of the Brava, even availing itself of the right of expropriation, it is incontroverta-ble that the primitive owners can claim in justice, not only to be indemnified simply, but that that which they granted for public benefit should return to their dominion. The claim would be limited to the corresponding indemnification if the ayuntamiento
536 could continue possessing the lands granted, but as this is impossible, as stated by the corporation itself, the right of the primitive proprietors is not now restricted to the fulfillment of the constitutional precept, but extends itself to recover by right of reversion that which they granted in obedience to the law which with respect to them it was not executed in all its parts, supposing that they were not indemnified in the terms provided by it. The delineation which the ayuntamiento pretend to make cannot be considered as a public benefit under any aspect, because the lands would not then be useful to the community, but would pass to private dominion. And is it not more just and equitable that the primitive owners recover the property which belonged to them, and for which they have received no indemnification than that it should pas*t*, not even by title of sale, to others who propose to speculate with this acquisition; nor be it said that it would be considered as a public benefit, the increase which the municipal funds of Matamoras would have with the price of the sale. No, sir, the right of expropriation has another origin more noble; the subject is not that of increase of the income of the public revenue, but of attending to the

welfare of the community. Otherwise it should be sustained that
537 all governments can take possession of private property to sell it, and with its proceeds augment and enrich its treasury, but the committee considers this to be so great an absurdity that it does not even deserve the honor of contradiction. The other aspect which this affair presents is the conduct which the Government of the United States of the North would pursue in case of granting the petition of the ayuntamiento of Matamoras. It is very probable that it would then be pretended that the lands sold by said corporation on the other side of the Bravo compose a part of the territory granted by virtue of the treaty of peace; it would be said that there being no property excepted but that of private individuals it should be considered as public domain, that which belongs to a municipal corporation, for reason that corporations of this kind cannot enjoy ejidos in foreign territories, nor even sell that which under aspects cannot be compared with property of private dominion. This would give rise, as the government well observes, to claims and disputes which always ought to be avoided on account of the transcendental consequences which they produce, complicating the international relations, and nothing more convenient and just at the same time than to procure to avoid this evil by means of an act conciliating the rights of the proprietors with the obligation which the State is under,
538 returning to them their property and releasing this from the responsibility of indemnifying them. From all the foregoing, and in view of the powerful reasons set forth by the government, the committee concludes, submitting for the ap'robation of the honorable Congress the resolution which the government (aquel) propose by way of inniciation under the same terms in which it is conceived. It being decreed by the thirteenth article of the old constitution of the State, and by the second part of the seventy-first article of the present, that in no case can the expropriation be made without the previous indemnification, and it not having been made in the part of the ejidas situated to the left of the Bravo, the ayuntamiento of Matamoras has not acquired property in it, and consequently it is held by its former owners.

Committee room, October, eighteen hundred and forty-eight.

VARGAS.
GARZA FLORES.

These are copies of the originals which are in the archives of this secretaryship, which are truly corrected, and are issued at the request of Mr. E. Basse, in compliance with the decree of the government inserted in the margin of the petition of the interested party; taken on seventeen useful leaves and sealed with that of the secretaryship, the intermediate ones rubricated and the last signed by the subscriber, first officer, acting as secretary.

City of Victoria, June twenty-eight, eighteen hundred and fifty.

JORGE.
JORGE HOPHAM,
Of'l Mayor.

539 *Statement of facts continued.—Disclaimer of Congress of Tamaulipas,* 1848. (*D.* 19.)

Action of Congress of Tamaulipas.

The C. Felipe Galazat, secretary of the R. corporation of the H. Matamoras:

I certify that in the portfolio containing official communications from

the government of the State of Tamaulipas, in the year of eighteen hundred and forty-eight, marked with No. 22, is found the original communication, which reads as follows:

One seal reading thus: Government of the State of Tamaulipas.

The government reported to the Hon. Congress, with the information made in consequence of the petition of your Y. ayuntamiento relative to ejidos, together with the documented exposition of Don Juan Treanor, and the Hon. legislature has seen fit to communicate to him this day what follows:

The Hon. Congress in session of to-day has approved the following resolution:

"It being prescribed by article 13 of the ancient constitution of the State, and by the part 2d of the article 71 of the present, that in no case an expropriation may be verified without the previous indemnification, and this not having been verified in the part of ejidos situated to the left of the Bravo," the corporation of Matamoras has not acquired any property in the same, and in consequence it is preserved by its ancient owners, and I insert it to y'r excellency for his knowledge and other purposes.

God and liberty.

City of Victoria, October 20th, 1848.

(Signed) JESUS CARDENAS.

540 Dr. RAMON F. VALDEZ. (One rubric.)

Very illustrious ayuntamiento (corporation) of Matamoras.

And by the written petition of the C. lawyer Cristobal Mentiel, in representation of Messrs. Stillman and Hale, and by an act of the presidency of this R. corporation of this date, for the uses they may deem proper, I write the present certificate, being a true and exact copy of the original to which I refer, and which can be found in the records of this office.

Office of secretary of the R. corporation of the H. Matamoras, March 5th, 1875.

(Signed) FELIPE SALAZAR,
Secretary.

Statement of facts continued.—A transcript from the records and minutes of the corporation of Brownsville. (*D.* 20.)

And defendants thereupon introduced and read in evidence the following documents:

Records and minutes of the corporation of Brownsville.

A transcript from the records and minutes of the corporation of Brownsville.

BROWNSVILLE, *Oct. 28th*, 1850.

We, the undersigned, do hereby publicly dedicate the use of the city of Brownsville for the purpose of a public market, seventy feet depth, of the full breadth of the rear of our respective lots, the same being situated in block eighty-seven (87), being between Eleventh and Twelfth streets, and Washington and Adams streets, in said city, provided said site be adopted by the city council for building or erecting the contemplated market thereon.

541

Eleventh street.

Washington street.		Alley.		Adams street.
	Cha's A. McDonald. Lot 7.		Philipe Floja. Lot 6.	
	W. W. Douglass. Lot 8.		John Hines. Lot 5.	
	Tho's Buchanan. Lot 9.		Rob't Findlay. Lot 4.	
	Henry Weaver. Lot 10.		If. Gamier Fries. Lot 3.	
	If. Gamier Fries. Lot 11.		Victor Lama. Lot 2.	
	J. P. McDonough. Lot 12.		Juan Gomesele Mente. Lot 1.	

Twelfth street.

Abstracts from the journals of the city council of city of Brownsville.

(Journal, page 114.)

THURSDAY ENSUING, *Oct.* 31*st*, 1856.

The committee on public buildings reports as follows:

To the city council of Brownsville:

GENTLEMEN: The committee on public buildings, to whom was refer'ed the selection of a site for the city market, and to contract for the building of a market-house, respectfully report: That they have given the subject of selecting a site a thorough deliberation, and also have received an offer of dedication of seventy feet in depth on the alley portion of the lots on block eighty-seven (87), in this city of Brownsville.

542 Independant of said offer of dedication as aforesaid, your committee are fully satisfied that the spot so offered is one of the most desirable for the purpose that they could have selected in the city, and cordially recommend it for the adoption of this board, as per resolution, to wit:

Resolved, That the site for the city market be, and the same is hereby, established on the alley and ground dedicated by the annexed document and plat, being in the rear of the lots on Washington and Adams streets in this city, between Eleventh and Twelfth streets, providing that the persons now proposing to dedicate the same comply

with their propositions, and that the building be commenced as soon as possible.

J. M. CONRAD,
W. W. NELSON,
THOS. BUCHANAN,
Committee Public Buildings.

BROWNSVILLE, *Oct.* 31*st*, 1850.

On motion, the above was adopted. The ayes and nays being called upon of the above resolution, it was adopted by the following vote:
Ayes—Conrad, Nelson, Casswell, Buchanan, and Scarborough—5.
Nays—None.

Statement of facts continued.—Extract from Watrous' book, page 944. (*D.* 21.)

Extract from Watrous' book, page 944.

On the third day of August, one thousand seven hundred and eighty, Don Jose Salvador de la Garza, to whom the special judge of
543 lands has adjudged and granted by way of sale fifty-nine sitios de ganardo mayor and eleven caballerias within the limits of the colony of New Santander, paid in reals of this court eleven dollars six reals and eight grains, which the royal duty of media annata imposed, computed at the half of what at five per centum the amount of four hundred and seventy-three dollars three reals brings, which latter sum he has paid (servido), as appears by the order which, with the endorsements of the royal officers, remains in this general office of accounts of the said royal duty under my charge.

In testimony whereof, and that it may appear wherever proper, I give the present certificate in Mexico, on the said day, month and year.

SUSURO DE ARROCETE DE GARZA.

Statement of facts continued.—Direct & cross interrogatories and answers of Louis Cowen & Samuel P. Gelston, taken by depositions.

And thereupon the plaintiff, further to maintain the issue in its behalf, in rebuttal of the evidence read and introduced by the defendants, read in evidence the testimony of Louis Cowen and Samuel P. Gelston, taken by depositions, as follows:

Interrogatories propounded to Samuel P. Gelston and Louis Cowen, witnesses who reside in the county of Cameron, and State of Texas, whose answers thereto, when taken, are to be read in evidence in behalf of the plaintiff on the trial of the above-entitled cause:

Interrogatory 1. State your name, age, occupation, and how long you have lived in Brownsville, Texas, and its vicinity.

Interrogatory 2. (To Samuel P. Gelston separately.) Do you or
544 not know of a map first made of the said city of Brownsville? If yea, please say who constructed said map, and who assisted such person, if any, in the work of the same; state fully; and where is such map now, if you know, or what became of it?

Interrogatory 3. (To Sam'l P. Gelston separately.) If in answer to the next preceding question you shall say that George Lyon made such first or original map of Brownsville, and that you assisted him, please state when it was, and whether or not you were familiar with the work and platting of said map as it progressed; state fully; and where is the said Lyon now, or is he dead or alive?

Interrogatory 4. (To Sam'l P. Gelston separately.) Who had possession of the said map after its completion? And if you say that the late I. B. Bigelow had it, state whether said Bigelow is dead or alive; in what capacity towards the defendants Stillman & Hale, or Stillman & Belden, or Basse & Hord, did he have said map, and what account, if any, did said Bigelow give during his life of the fate of said map?

Interrogatory 5. (To Sam'l P. Gelston separately.) Under whose orders and direction was the said map made? And if you shall say that said map was made under the orders of C. Stillman, S. A. Belden, and Jacob Mussina, state who succeeded them in their claims to the town or city of Brownsville. And if you shall say that E. Basse & R. H.
545 Hord succeeded said Stillman, Belden, & Mussina in their claims to the lands of the town or city of Brownsville, state what relation said Bigelow held to said Basse & Hord, and to their grantors, in reference to the said map and the said lands.

Interrogatory 6. (To Sam'l P. Gelston, separately.) State whether any reservations or limitations were signified or noted on the said map in reference to the use of the streets and alleys designated on the same; and, if yea, state what they were fully.

Interrogatory 7. (To Sam'l P. Gelston, separately.) State what was the space in front of said city and of blocks 58 & 59, bounding on the river, usually called, and if you say it is and *and* was called the levee, please to state in what manner it was laid off in regard to limit on the river side, and whether or not it had any other boundary than the river in that direction.

Int. 8. (To Sam'l P. Gelston, separately.) Where has the ferry landing been on the front of said city until within a few weeks past, and where is it now, and whether or not it is on the alluvial accretion of said original levee?

Int. 9. (To Sam'l P. Gelston, separately.) Was or not the said levee a part of a street of said city; and, if yea, of what street and how did it run in reference to said levee?

Int. 10. (To Sam'l P. Gelston, separately.) How wide were the streets running parallel with the river and Levee street laid out? And state, if you know, how wide the space between the northerly line of
546 said levee and the river has been for some years past, and how the same stands at present in front of blocks Nos. 58 and 59 in said city.

Int. 11. (To Sam'l P. Gelston, separately.) Have you ever held any office under the city of Brownsville as chartered by the act of the legislature of Texas, of January 24, 1850; and, if yea, what office and during what term?

Int. 12. (To Sam'l P. Gelston, separately.) If you shall state that you held the office of city secretary under said former corporation, state whether the minutes of the same are extant; and, if yea, in whose custody are the said minutes.

Int. 13. (To Sam'l P. Gelston, separately.) Look upon the exhibits now shown you, and marked A 1, and state whether you have compared the same and each of them with the original entries in the book of minutes of proceedings of the city council of said former corporation, and whether they, & each of them, are or not correct copies or extracts of what they purport to be respectively.

Int. 13. (To Louis Cowen, separately.) After answering the first direct interrogatory, please state what office, if any, you hold in the said city of Brownsville, and how long have you held the same.

Int. 14. (To Louis Cowen, separately.) If you say that you are secre-

tary of the said city, please to state how far back or since what date are the records of the city council of the present city of Brownsville
547 extant. For about what years or time, if any, are the records of the said present city council missing, and what has become of them, if you know? Are or are you not the custodian of said city records, and have you the same in your charge?

Int. 15. (To Louis Cowen, separately.) Where is the book of minutes of the proceedings of the city council of the corporation of Brownsville as chartered under the act of the legislature of Texas approved January 24, 1850, and who has charge of the same, and in what capacity is such charge or custody held?

Int. 16. (To Louis Cowen, separately.) If you shall state that you have the charge and custody of the said book of minutes, please look upon the exhibit now shown you, & marked Exhibit A 1, and state whether you have compared the same with the original entries in the said book of minutes of said former corporation, and whether the same contains true copies or extracts of said original entries in said book of minutes of what they purport to be respectively?

Int. 17. (To Louis Cowen, separately.) Please examine the exhibit now shown you, and marked Exhibit A 2, and state whether you have compared the same with the original entries in the books of minutes of the present corporation of the city of Brownsville, and whether the same contains true and correct copies or extracts from the said original entries of what they purport to be in said books of minutes, and whether
548 the said books are records of the said city, and pertaining to its archives, and are under your charge and 'ustody as city secretary. Examine the certificates and seal attached to said Exhibits A 1 and A 2 and state who signed the same, and in what capacity, who affixed the seal or seals thereto; and state what seal it is, and who has charge of it, and whether you are authorized to use and affix said seal to authenticate your official acts.

Int. 18. (To Samuel P. Gelston & Louis Cowen jointly.) Are you or not acquainted with the market-house of Brownsville, and since when? Who built it? On what land; where is the same situated as regards locality? Who established the plaza or square around it? Who collects the rents arising from *from* said market-house? Under what claim does the city of Brownsville hold and possess said market-house and the land on which it is built upon and the said plaza or square, and since when has said city so held and possessed the same?

POWERS & MAXAN,
Attorneys for Pl'ff.

To Maria Josefa Cavazos, Charles Stillman & William G. Hale, defendants, or Wm. G. Hale, Jas. R. Cox or B. B. Seat, their attorneys of record:

Please take notice that you are required to produce on the trial of this cause the original first map of the city of Brownsville made by
549 George Lyon, and that upon your failure to do so, parol evidence will be introduced by the plaintiff to prove its contents.

Brownsville, Tex., June 5th, 1875.

POWERS & MAXAN,
Att'ys for Pl'ff.

Cross int'g's to Sam'l P. Gelston & Louis Cowen.

Defendants herein, saving and reserving any and all exceptions to

the relevancy, competency, legality, or admissibility of the interrogatories of plaintiff herein, as well as to the manner of taking and returning the answers thereto, propound the following cross interrogatories to the witnesses Samuel P. Gelston and Louis Cowen as follows, to wit:

Cross-int. 1. If in answer to direct interrogatory third you shall state that George Lyon made the first or original map of Brownsville and that you assisted him in making the same, state how you know that such map was the first or original map of Brownsville; and are you positive that you assisted in making the first map of Brownsville; and if yea, in what respect, and how did you assist in making the said map?

Cross-int. 2d. If in answer to direct interrogatory the fourth you state that the late J. B. Bigelow had possession of said map after its completion, please state how you know that fact, and state further if you are positive that the map in possession of the said Bigelow was the same identical map which you denominate the first or original
550 map of Brownsville made by George Lyon and which you assisted him in making.

Cross-int. 3d. If you answer that the said Bigelow was agent of Stillman and Hale, or Stillman & Belden, or Basse & Hord, state how you know such fact, when such agency, if any, existed, and whether by verbal or written authority, and to what extent he was agent, for what particular purpose he was agent, if at all, and how long such agency continued, and through and during what particular years he acted as such agent, if at all.

Cross-int. 4th. If you answer that the so-called first original map of Brownsville has been lost or destroyed, state how you know that fact, what were the circumstances of such loss or destruction, when it happened, and are you positive that no other map of Brownsville was made by George Lyon other than the original map of which you speak, and are you absolutely certain that George Lyon had not made a map of Brownsville before the one of which you speak as the first or original map?

Cross-int. 5th. If in answer to interrogatory the sixth you say that there were reservations and limitations noted on the said original map respecting the use of the streets and alleys designated on the same, state what were the uses so designated, and by whom were the reservations and limitations noted on said map authorized to be made?

Cross int. 6th. If you answer that the space in front of the city
551 and of blocks 58 & 59, bounding on the river, were called the levees, state what was known as Levee street, and was or was not Levee street one of the streets of said city, designated and laid off at the same time with the other streets of said city; and if yea, state particularly what constituted the said Levee street, how wide was said street, and how far did it extend in the direction paral'el with the river?

Cross-int. 7th. If you answer that the levee and Levee street were one and the same, state whether or not wharves and wharf-sheds have been erected at any time in front of said city; and if yea, state by whom and where. Were they on the said levee or Levee street, or did the street run between them and blocks 58 & 59; and if yea, how wide was the said street so running between the said wharves and wharf-sheds and the said blocks 58 & 59, and when were said wharves and wharf-sheds erected?

Cross int. 8th. What is the earth structure which extends at present from what is known as Levee street to the ferry-landing called; and

how does it run with respect to Levee street, and how far is the ferry-landing at present from the said Levee street?

Cross-int. 9th. If you answer that there have been at any time wharves or wharf sheds or other structures erected on or near said levee or Levee street, in said city, state who erected the same and who have assumed and exercised control over the same, and who have assumed and
552 exercised control over the said levee and Levee street, and what private parties have expended money and labor for the protection of the said Levee street?

Cross-int. 10th. Is the present earth structure extending to the ferry-landing within the bounds of what is known as the Levee street, in said city; and if yea, how far from blocks 58 & 59 does the said earth structure extend?

Cross-int. 11th. If in answer to direct interrogatory the twelfth you state that you have held the office of city secretary in the city of Brownsville, state for what particular years you acted as such secretary, and state whether or not the exhibits hereto attached and marked Exhibit A 1 and Exhibit A 2 are full and complete transcripts of the minutes of the city council of the city of Brownsville respecting the matters at issue in these causes from April 29th, 1850, to October 4th, A. D. 1851, and from May 4th, A. D. 1853, to March 13th, A. D. 1873, respectively, and are all the entries of said minutes relating to the controversy between the city of Brownsville and Messrs. Stillman, Belden, and Hale, Basse & Hord, and others embraced in said transcript?

Cross-int. 12th. What has become of the minutes of the city council of said city of Brownsville from November 22d, A. D. 1851, to May 2d, A. D. 1853, and from June 23d, A. D. 1859, to January 3d, A. D. 1866?

553 Cross-int. 13th. If you answer that the exhibits marked Exhibit A 1 and Exhibit A 2 have been examined and compared with the original of the minutes of said city by you, state if such exhibits contain all the entries respecting the matters to which they relate; and if not, why have any entries in said minutes been left out of the said transcripts marked Exhibit A 1 and Exhibit A 2? State fully and distinctly in your answer.

Cross int. 14th. How did the city of Brownsville acquire a claim to the land on which the market plaza and market-house is situated in said city, and from whom and when was such claim perfected; and if donated to said city, by whom and when was such donation made, and for what purpose?

Cross-int. 15th. Do you know the structure in front of said city of Brownsville called the "break-water"; and if yea, state when it was constructed, for what purpose, and by whom, and how far the said break-water is from Levee street, and is said break-water in the bounds of said Levee street?

Cross int. 16. Do you know any other matter or thing relating to the questions at issue between the parties to this suit? If so, state fully and distinctly in your answer all that you know which may be of benefit or advantage to defendants.

B. B. SEAT,
Att'y for Def'ts.

554 *Deposition of Louis Cowen.—Answers to direct int'g's.*

Answers and deposition of Louis Cowen, who resides in Cameron County, State of Texas, to the accompanying interrogatories propounded to him in the above-entitled cause, taken by H. A. Maltby, commissioner of the said circuit court to take affidavits and bail, in accordance with the agreements of counsel for the respective parties in the said cause.

The said witness, Louis Cowen, having been by me, the said commissioner, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in answer to the said direct and cross-interrogatories, and being carfully examined by me, the said commissioner, did depose and testify as follows:

1. To the 1st interrogatory he answers: Louis Cowen; forty; accountant; I have lived permanently in Brownsville since 1855 or 1856.

13. To the 13th interrogatory he answers: I hold the office of city secretary of the city of Brownsville, and have held the same continuously since November 18th, 1872.

14. To the 14th interrogatory he answers: The records of the proceedings of the city council of the former city of Brownsville begun April 8th, 1850, in book A. There are missing the record of said proceedings from June 23rd, 1859, to January 13th, 1866. I understand that the record missing was lost or destroyed during the disturbances of the late civil war. I am the custodian of said city records,
555 and I have the same in my charge.

15. To the 15th interrogatory he answers: The book of minutes of the proceedings of the city council of Brownsville under the first charter, approved January 24th, 1850, is extant in Brownsville, in my office; I have charge of the same in my capacity as city secretary.

16. To the 16th interrogatory he answers: I am looking on Exhibit A 1 now shows me; I have compared the same with the original entries in the said book of minutes of said former corporation, and the same contains true copies or extracts of said original entries in said book of minutes of what they purport to be respectively.

17. To the 17th interrogatory he answers: I am looking on Exhibit A 2 now shown me, and I have compared the same with the original entries in the book of minutes of the present corporation of the city of Brownsville, and the same contains true and correct copies from the said original entries of what they purport to be, in said books of minutes, and the said books are records of the said city and pertain to its archives, and are under my charge and custody, as city secretary. I have examined the certificates and seal attached to said Exhibits A 1 and A 2, and I declare that I have signed the same in my capacity as city secretary, and that I have affixed the said seal or seals thereto, and that the said seal is the seal of the city of Brownsville, which I
556 have in my charge, and that I am authorized to use and affix said seal to authenticate any official acts. The books of minutes mentioned by me in this answer are books A and B of said minutes.

18. To the 18th interrogatory he answers: I am acquainted with the market-house of Brownsville since I have lived in Brownsville. I understand the same was built by McDonough and Suzeneau, builders, for the city of Brownsville, on the square of land known as block 87; it is on the third tier of blocks from the river, and the fourth from the garrison enclosure, in the city. I understand that the plaza or square around the market-house was established by the city council of Brownsville.

The city of Brownsville collects now, and has since I have lived here, the rents arising from said market-house, excepting during some portions of time during the late civil war. During the last occupation of Brownsville between the spring of 1865 to the re-establishment of the civil authorities of the city in 1866, the rents were collected by the U. S. officers, and were subsequently turned over to the city authorities. The city of Brownsville holds and possesses the said market-house and the land on which it is built, upon the said plaza or square, under a grant from the State of Texas at the time of its incorporation. The city of Brownsville has so held and possessed said premises since I have lived here to my knowledge; I understand it had so held it for some years before.

557 *Deposition of Louis Cowen.—Answers to Cross-int'gs.*

1. To the 1st cross interrogatory he answers: I know nothing of this question.
2. To the 2nd cross-interrogatory he answers: I know nothing of this question.
3. To the 3rd cross-interrogatory he answers: I have not stated anything about Bigelow's agency.
4. To the 4th cross-interrogatory he answers: I have not stated anything about maps.
5. To the 5th cross interrogatory he answers: I know nothing of this question.
6. To the 6th cross-interrogatory he answers: I have stated nothing about the levee or Levee street.
7. To the 7th cross-interrogatory he answers: I have stated nothing about the levee or Levee street.
8. To the 8th cross-interrogatory he answers: The earth structure inquired about has no particular name that I know of. It runs at right angles to Levee street. The present ferry landing is about 150 yards from Levee street.
9. To the 9th cross-interrogatory he answers: I have not stated anything about wharfs or wharf-sheds. The earth structure, just spoken, was built by the receiver in this cause, and he assumes and exercises control over the same. I know nothing further of the matters inquired of in this cross-interrogatory.
10. To the 10th cross-interrogatory he answers: The said earth structure comes a little within Levee street, and extends, as I have stated before, about 150 yards from block 58 towards the river along the
558 continuation of 12th street. Where the earth structure joins Levee street it is over a hundred yards to block 59.
11. To the 11th cross-interrogatory he answers: As city secretary I was instructed to make copies from the minutes of proceedings of the former and present corporations of Brownsville of all material entries respecting the title of the city of Brownsville to the lands in controversy in these suits; if any are omitted it is quite casual, and not from a motive to suppress anything. I would not say, therefore, that the said Exhibits A 1 and A 2 embrace all the entries of said minutes relating to the controversy between the city of Brownsville and Messrs. Stillman, Belden & Hale, Bosse & Hord, and others, embraced in said transcripts, and as to the date enquired about.
12. To the 12th cross interrogatory he answers: There was no pages missing in book A of the minutes of the city council, to which this question refers, and I take it that there never was any minutes between the

dates mentioned because there was no city corporation then, as the first charter had been repealed. As to the minutes between June 23rd, 1859, and January 3rd, 1866, I have already stated what became of them in my answer to the direct interrogatory 14th, to which I refer.

13. To the 13th cross-interrogatory he answers: I cannot answer this question more fully than I have to 11th cross-interrogatory, to
559 which I refer for answer hereto. I repeat that I was instructed to make selection of the entries in said Exhibits A 1 and A 2. I did so, so far as I thought material. I omitted none from motives of suppression. No other or further entries were called for by either party, and so I do not furnish them.

14. To the 14th cross-interrogatory he answers: The city acquired the claim to the market plaza and market-house through its grant from the State under its charter. I know nothing further of this question.

15. To the 15th cross-interrogatory he answers: I do. It was constructed about the year 1870, for purpose of turning the current of the river to the Mexican side. Mr. Belden was the person who I understood built it. It is between 300 or 400 yards from Levee street. It is not within the bounds of Levee street. It is built on the alluvial accretions in front of Brownsville, 300 or 400 yards south of Levee street.

16. To the 16th cross-interrogatory he answers: I know nothing further which may be of advantage to the defendants herein.

LOUIS COWEN.

Deposition of Sam'l P. Gelston.—Answers to direct int'gs.

Answers and deposition of Samuel P. Gelston, who resides in Cameron County, State of Texas, to the accompanying interrogatories propounded to him in the above entitled cause, taken by H. A.
560 Maltby, commissioner of the said circuit court to take affidavits and bail, in accordance with the agreements of counsel for the respective parties in the said cause.

The said witness, Samuel P. Gelston, having been by me, the said commissioner, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in answer to the said direct and cross-interrogatories, and being carefully examined by me, the said commissioner, did depose and testify as follows:

1. To the 1st interrogatory he answers: Samuel P. Gelston; my age is 55; merchant; lived in Brownsville since August 16th, 1848.

2. To the 2nd interrogatory he answers: I do know of such map. George Lyons constructed it. I assisted in the survey. He platted the map. The survey was a necessary part of the work. I do not know where the original map is nor what became of it, personally.

3. To the 3rd interrogatory he answers: The map was made in the latter part of the summer and fall of 1848. I was familiar with the platting of said map as it progressed. By general rumor George Lyons is dead; said to have died in Arkansas, before the war; has not been heard from since.

4. To the 4th interrogatory he answers: The town company was first composed of Charles Stillman, S. A. Belden, and Jacob Mussina, and their agents for the sale of lots first had possession of said map
561 through Simon Mussina, and the last that I ever saw of it I. B. Bigelow had it, which I think was since the late war. Said Bigelow is dead; died in 1869. Bigelow was an agent for Basse and Hord, who succeeded the first town company as claimants of the town-site of Brownsville, including Basse and Hord, C. Stillman, S. A. Belden, and

M. Kenedy, and continued to act as agent of the different town claimants to the time of his death, excepting during the late war. Mr. Bigelow, to the best of my recollection, told me the original map was destroyed in the hurricane of 1867, when his office blew down and destroyed many papers and documents. I saw the map frequently before this, but never after.

5. To the 5th interrogatory he answers: The said map was made under the orders of Charles Stillman, S. A. Belden, and Jacob Mussina, who was represented by his brother, Simon Mussina. E. Basse and R. H. Hord succeeded said Stillman, Belden, and Mussina in the claim to the town-site of Brownsville, and said Bigelow was then agent for the sale of lots and the management of the property.

6. To the 6th interrogatory he answers: The said map had no reservations or limitations noted on the same in reference to the use of the streets and alleys.

7. To the 7th interrogatory he answers: The space in front of
562 the said city and of the blocks mentioned—58 and 59—was usually called the levee. It was left open to the river on the south, without limit or other boundary in that direction, and form'd a part of Levee street. At the time of constructing the map it was wider, considerably, than the regular Levee street above said blocks.

8. To the 8th interrogatory he answers: The ferry-landing on the front of said city, until within a few weeks past, has almost continuously since 1849 been on this levee, in front of block 59, except that in this time the river has eaten in along the whole front of blocks 58 and 59 and above, so that the water's edge has been nearly even with the north line of Levee street, and for several years past the ferry landing has in fact been within Levee street, as continuously projected from the westerly direction. It is now above where it has been, in front of block 58, on an accretion of the river which has gained within a few years to about to the original water-line at this locality and a little further, but this accretion has not continued below, in front of block 59.

9. To the 9th interrogatory he answers: I have already said that the levee, so called, was a part of Levee street, as designated in the said map. The main Levee street runs from this locality northwesterly.

10. To the 10th interrogatory he answers: The streets running par-
allel with the river and Levee street were sixty feet wide, as laid
563 out. I have stated that the river has eaten in in front of said blocks 58 and 59 so as to come quite up to the northerly line of Levee street. In some places it has receded somewhat, and more in front of a part of block 58, but still at high water in the river the water would, in front of block 59 and a part of 58, come even up to the north line of Levee street. In some places it is now impassable for vehicles.

11. To the 11th interrogatory he answers: I was city clerk under and during the charter mentioned for a part of two years, and up to the repeal of the charter in the years 1850 & 1851.

12. To the 12th interrogatory he answers: The minutes of the former corporation are mostly extant, though I cannot say as to loose papers and documents not entering into the minutes; the said minutes are in the custody of Louis Cowen, the secretary of the present city council.

13. To the 13th interrogatory he answers: I have compared the exhibit marked A 1, and attached to my answer hereto, and find the same to be true copies of the original entries in the book of minutes of the proceedings of the city council of said former corporation of Browns-

ville. I recognize my handwriting in which said entries are recorded, in the book of minutes from which they are taken.

18. To the 18th interrogatory he answers: I am acquainted
564 with the market house of said Brownsville since it was commenced in 1850, and completed in 1851. Messrs. McDonough and Suzeneau built it, on block 87 of the said city. Block 87 is one of the blocks of the land comprising said city, two and a half blocks retired from the river. The city council of the former corporation established the market plaza or square around the market-house. The city of Brownsville has possessed and claimed the land on which the market-house and plaza are under its title from the State, and has held and possessed the same since said market-house was first commenced and built.

Deposition of Sam'l P. Gelston.—Answers to cross-int'g's.

1. To the 1st cross-interrogatory he answers: I know that the map of which I speak of was the first and original map of Brownsville, because I was employed by George Lyons to assist him in making the survey. It was when American forces evacuated Matamoras in August, 1848, and the citizens and civilians crossed to this side with such of the United States Government employers as remained on this line. There was then no establishments but Fort Brown on this side, except a store or two at what was the former ferry-crossing now known as Freeport. My assistance consisted in measuring and staking out blocks and lots; Lyons did the platting, and I saw the daily progress of the work. It
was a part of my business to give details of the measurement of
565 lots and to see them plotted, as I knew them to be.

2. To the 2nd cross-interrogatory he answers: I know that the map I speak of was in the possession of the late I. B. Bigelow, was the original map of Brownsville, from having frequently seen it from the beginning, and I know that no other such map was ever made except to copy from the original.

3. To the 3rd cross-interrogatory he answers: I know that said Bigelow was agent of the parties enquired about, from seeing him engaged in their business in regard to said property. I have known him as such agent for Basse and Hord, and of Basse and Kenedy, and of Stillman and Belden. I cannot mention the years positively, but for many years before the war and since. I do not know exactly when Mr. Hale became one of the town company; but during the life of Mr. Belden as agent for the lands, and the same during the years that Basse and Hord held the claim to said lands, Bigelow's agency was a fact within the knowledge of all who had any knowledge of town matters; he had the showing of all the lots to purchasers and preparation of the papers. I have always heard Mr. Belden refer people to Bigelow, in this connection. He also collected lot rents from those that rented lots, and had
the map for all these purposes. I do not know whether his
566 agency was by writing or verbal. This is as near as I can answer this question.

4. To the 4th cross-interrogatory he answers: As to the map I speak of, I know it was the first and original map made by George Lyon; he could not have made one before this, as he only came here or to Matamoras after the peace in 1848, and about the month of July or August of that year. As regards the loss of the map I have stated all I know. I have never seen it since Mr. Bigelow told me it was destroyed. Lyons might have made copies of this map; of this I do not know; there are

maps in existence which are called G. Lyon's map; they are, so far as I heard, the same, except limiting the levee to sixty feet in width in front of blocks 58 and 59, where originally it was left open to the river, and the levee being much wider than the ordinary Levee street above.

5. To the 5th interrogatory he answers: I have not stated that there were any reservations or limitations noted on said original map respecting the use of the streets and alleys, nor were there any.

6. To the 6th interrogatory he answers: Levee street, as known and laid off, was, as I have said, sixty feet wide, and extending from the garrison of Fort Brown northwesterly as far as the plat included, excepting that in front of said blocks 58 and 59 the space men-
567 tioned as the levee was left open to the river and for general use, the same as the balance of the street; this Levee street was laid off at the time the said map was made as one of the streets of the town. Its general direction, if parallel to the river, only lasted or extended in front of said blocks 58 and 59, because in front of block 57, or at the upper corner of block 58, the river made a bend.

7. To the 7th interrogatory he answers: Sections of wharves and wharf shed have been erected on the water front of said levee. All of them were partially within the range of a sixty-foot street, if Levee street had been limited to this width. The Brownsville Levee Company built these structions in front of blocks 58 and 59; none of them are now standing. As I have said, they were built on Levee street, including the space known as the levee; there was not room for a sixty-foot street between them and the north line of Levee street.

8. To the 8th cross interrogatory he answers: There is a raised earthwork extending from the upper corner of block 58, at the junction of Levee and 12th streets, southwesterly some hundred and fifty yards, I should think, to the present ferry-landing. I know of no particular name for it. It runs nearly at right angles with Levee street, not quite; it inclines a little to the left of a right angle, but not much; the greater portion of this raised work is on a line of a continuation of 12th
568 street as projected towards the river. As the city was originally laid off the present ferry-landing would be within the space known as the levee, and as left open to the river, as the southern limits of Levee street, allowing for a small accretion on its front.

9. To the 9th cross-interrogatory he answers: I have stated that the Brownsville Levee Company erected the wharves on Levee street and the levee; the shed, on reflection, was put there by the receiver in this suit. Up to the beginning of this suit the levee company exercised control over these wharves. I am not aware that any private parties assumed and exercised control over Levee street to the exclusion of the public. I saw some filling up and apparent repairs on said street that I understood was being done by the Brownsville Levee Company.

10. To the 10th cross-interrogatory he answers: As I have said, the raised earth structure extending to the ferry-landing I should think to be about one hundred and fifty yards from the upper corner of block 58, and as originally laid off would be embraced within the levee and Levee street, allowing for a small alluvial accretion on the river front.

11. To the 11th cross-interrogatory he answers: I can only answer this question so far as the minutes of the former corporation of Brownsville is concerned, as to which the said Exhibit A1 embraces the
569 entries. I acted as city clerk to the former corporation of Brownsville during its charter, say in 1850 & in 1851. Mr. Cowen, the present city secretary, copied off the entries composing Exhibit A1. I cannot say that they embrace all of the entries that relate to the subject-

matters at issue in these suits between the date enquired about, but probably the most material entries in this subject. I notice the omissions of some entries in regard to the establishment of the market and market square, and some few other unimportant matters which are not supplied, as neither party has called for them. I cannot say, therefore, that the said entries are all that relate to the controversy between the City of Brownsville and Messrs. Stillman, Belden and Hale, Basse and Hord, & others, embraced in said transcript.

12. To the 12th cross-interrogatory he answers: I know nothing of this question.

13. To the 13th cross-interrogatory he answers: I can only answer this question as I did the 11th cross-interrogatory, and so far only as the minutes of the former corporation of Brownsville are concerned. I had nothing to do with selecting or rejecting any of the entries.

14. To the 14th cross-interrogatory he answers: The city of Brownsville acquired her claim to the site of the market-house and plaza by her grant of the land from the State. The particular lots were occupied
570 by settlers with whom she made arrangements, and thus established her possessions of the same. The particular settlers were, I believe, C. A. McDonald, W. W. Douglass, Thomas Buchanan, Henry Weaver, Garnier Pieres, J. P. Donough, Philip Flood, John Hines, Robert Finly, Garnier Fieres, Victor Sarma, and Juan G. Mente; these settlers dedicated part of the lots in their possession for the purpose of a market house and square or plaza, and the city put the market building on the square thus established. This was, I think, some time in October, 1850.

15. To the 15th cross-interrogatory he answers: I know the structure in front of said city called the "breakwater"; it was constructed about 1867 or 1868. I cannot recollect exactly the year. I do not know exactly who had it done, whether the town company, so called at the time, or the Brownsville Levee Company. The avowed purpose of its construction at the time was to prevent the river eating away the banks. The breakwater is above the levee and Levee street, and is not within the bounds of Levee street.

16. To the 16th cross-interrogatory he answers: I know nothing further relating to the questions in issue between the parties to this suit of advantage to the defendants.

SAM'L P. GELSTON.

571 *Statement of facts continued.—No. 202.—Exhibit A 1.—Transcript from minutes of first corporation of Brownsville.*

And plaintiff then introduced and read in evidence Exhibit A 1 and Exhibit A 2, attached to the foregoing depositions, to show acts of user and ownership by said plaintiff over the lands involved, as follows:

(Page 15 of book A.)

At a regular meeting of the city council of the city of Brownsville, held April 29th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

On motion of Alderman Bryan, seconded by Alderman Dye, it was resolved that the street and landing committee be instructed to examine into the practicability of removing the wharf-boats Frankland and Whiteville to the bend of the river. And if pract'able that the marshall

be instructed to move them instanter. And also the best means and probable cost of repairing the levee.

* * * * * * *

(This is the exhibit, marked A 1, shown to the witnesses Samuel P. Gelston and Louis Cowen, and referred to by them in their depositions taken before me and attached thereto.

[SEAL.] H. A. MALTBY,
U. S. Commissioner, etc.)

(Page 23 of book A.)

At a regular meeting of the city council of Brownsville, held
572 May 6th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

It was resolved, That plans for and the estimate of the cost of such plans for the necessary protection of the city levee be received by the city council of Brownsville until the 20th day of May, 1850. On motion of Alderman Dougherty, seconded by Alderman Nelson,

* * * * * * *

(Page 25 of book A.)

At a regular meeting of the city council of the city of Brownsville, held May 25th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

On motion, Resolved, That a committee of three be appointed by the chair to confer with the present proprietor of the ferry at the foot of Fourteenth street, and that the committee be instructed to ask the proprietor to remove the ferry from its present location and place the same between 13th and 12th street, and that the expense of removing the same be paid by the city committee, Dye, Bryan, and Lewis.

* * * * * * *

(Page 39 of book A.)

At a regular meeting of the city council of the city of Brownsville, held July 11, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

573 On motion of Alderman Bryan, seconded by Alderman Conrad, Resolved, That the first proposals of Geo. Lyons for surveying and defining the limits of the city of Brownsville be accepted, and that he be paid out of the first moneys received in the treasury, unappropriated, and also that he be requested to commence immediately.

* * * * * * *

(Page 40, book A.)

At a regular meeting of the city council of the city of Brownsville, held July 13th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

The committee to whom was referred the ordinance amendatory to an ordinance regulating levee dues, and for other purposes, reported favorably.

Alderman Bryan moved its adoption.

Adopted by the following vote * * * Ayes, Conrad, Moses, Bryan, Buchanan, Webb, and Garey. Nays, none.

* * * * * * *

(Page 43, book A.)

To the honorable city council of the city of Brownsville:

Your committee, appointed to enquire into the expediency or practa'bility of changing the ferry-landing, respectfully report: That they have attended to the duties assigned them, have come to the conclusion that a removal of the same would be impract'able and inexpedient, and ask to be discharged from said committee.

574

J. W. CONRAD,
JOHN WEBB,
THOS. BUCHANAN,
Committee.

BROWNSVILLE, *July* 13, 1850.

On motion the report was received and committee discharged.

* * * * * * *

(Page 51, book A.)

At a regular meeting of the city council of the city of Brownsville, held July 20, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

Ald. Moses proposed an amendment to the ordinance regulating levee dues, which was lost by the following vote * * * Ayes, Moses * * * Nays, Conrad, Buchanan, and Dougherty.

* * * * * * *

(Page 54, book A.)

At a regular meeting of the city council of the city of Brownsville, held August 3rd, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

On motion, Resolved, That a committee of three be appointed to take into consideration the propriety of so amending the several ordinances on the subject of levee dues as to reduce the same fifty per cent., and also to introduce such other amendments as may be deemed necessary and expedient * * * Committee, Conrad, Buchanan, and Dougherty.

* * * * * * *

575 (Page 56, book A.)

At a regular meeting of the city council of the city of Brownsville, held August 10th, 1850, at which there was a quorum present, the following action was made:

* * * * * * *

Alderman Conrad, on behalf of the special committee to revise levee ordinances, reported the following resolution, which was on motion adopted and the committee continued.

Resolved, That the wharf-master be authorized, whenever he may deem it expedient, * * provided all former dues have been paid, to allow the captains of steamboats about to ascend the river to defer the settlement of the levee dues until the return trip of the boat to this city.

* * * * * * *

(Page 56 & 57, book A.)

An ordinance creating the office of city attorney for the city of Brownsville, defining the duties of said officer, and fixing his salary.

* * * * * * *

Section 1st. Be it ordered by the city council of the city of Brownsville, That an office be and the same is hereby created, to be entitled city attorney for the city of Brownsville, whose duty it shall be to attend to all business of the board comeing * * * within the pale of his profession as a lawyer, also to give all legal advice necessary for the proper conduct of the business of the board, and do and perform such services may be from time to time required by the city coun-
576 cil in the line of his professions, and shall from time to time receive such compensation for his services as the city council shall deem proper to establish.

* * * * * * *

(Page 50, book A.)

WEDNESDAY, *Sept. 4th*, 1850—1 *o'clock p. m.*

Council met pursuant to a call from the president of the council. * * * Present, Alderman Garey, Conrad, Scarborough, Buchanan, Bloom, and Wentz. Ald. Garey in the chair.

Alderman Conrad presented a petition from sundry citizens praying for the repeal of the city ordinance for the assessment & collection of levee dues.

On motion, the petition was received.

* * * * * * *

Alderman Conrad proposed the following, which was on motion adopted:

Resolved, That the prayer of the petitioners be granted, and that all ordinances of this council relating to the ass'ing and collections of levee dues be and the same are hereby repealed.

* * * * * * *

(Page 86 & 87, book A.)

At a regular meeting of the city council of the city of Brownsville, held September 7th, 1850, at which there was a quorum present, the following action was *read*:

* * * * * * *

The undersigned present to the council a legal license from the county court of the county of Cameron for the ferry rights across the Rio Grande, within the limits heretofore mentioned, and leave the
577 further action of the city council to its judgement and discretion.

All of which is respectfully submitted.

* * * * * *

R. GARLAND,
STEPHEN POWERS,
Attorneys.

(Page 98, book A.)

At a regular meeting of the city council of the city of Brownsville, held October 5th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

Alderman Scarborough proposed the following: * * *

Whereas, a suit has been recently instituted in the district court of Cameron County by Wm. Alling, of New Orleans, through their attorneys, Messrs. Basse & Hord, of this city, against In. E Garey, E. Dougherty, J. M. Conrad, Tho's Buchanan, Conrad Bloom, E. B. Scarborough, and J. N. Wentz, a committee of the council, to secure the city rights of the ferries to the city of Brownsville, through the hon. the county court of Cameron County; and also against Felix Maxan, the present les'ee of said ferry priviledge, as granted to the city by said * * * county court; and whereas said suit has been improperly brought against the said above-mentioned persons as individuals of the city council of the city of * * * Brownsville, and in order to release said persons as above-named from all individual responsibility for acts done in their corporate capacity as well as to assume all costs and damages that might possibly ensue by or through said suit. * * *

Therefore,

578 Resolved, That this council assume all the responsibility in said case, and that the costs and damages which might result by or through the same be and the same is hereby assumed by this city council.

* * * * * * *

(Page 99, book A.)

Resolved, That said ferry committee be, and they are hereby, authorized to procure such council, in * * * addition to the services of the city attorneys, as they may deem necessary to defend them in said suit, and that the expense of the same will be assumed by this board.

The ays and nays being called on the above, it was adopted by the following vote:

Ays—Buchannan, Scarborough, Nelson, Wentz, and Conrad, 5; Nays, 1.

* * * * * * *

On motion Alderman Scarborough, that the map of the city of Brownsville, as surveyed by Mr. Geo. Lyons, in the month of July and August, A. D. 1850, be received and adopted as the legal map of the city of Brownsville.

On motion,

Resolved, That the bill of Geo. Lyons for surveying be received and audited.

* * * * * * *

(Page 101, book A.)

At a regular meeting of the city council of the city of Brownsville held October 8th, 1850, at which there was a quorum present, the following action was read:

* * * * * * *

On motion,

Resolved, That Mr. Lyons be employed to make such a copy of

579 the city map as the city att'y may designate, said map to be submitted to the board of land commissioners for the examination of land titles.

* * * * * * *

(Page 126, book A.)

At a regular meeting of the city council of the city of Brownsville, held December 14th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

On motion,

Resolved, That this council authorize some suitable person to bring a certiorari upon the judge of the county court lately made, granting a ferry license to P. C. Shannon to a ferry across the Rio Grande within the limits of this city. * * *

Resolved, That the mayor be authorized to employ the necessary council for the procuring of the above instrument.

The ays and nays being called for upon the adoption of the above resolution, it was adopted by the following vote. * * *

Ays—Buchanan, Scarboro, and Casswell. * * * Nays—Nelson and Garey.

* * * * * * *

(Page 127, book A.)

At a regular meeting of the city council of the city of Brownsville, held December 18th, 1850, at which a quorum was present, the following action was had:

* * * * * * *

580 Ald. Conrad proposed the following resolution, which was on motion adopted:

Resolved, That the unexpired term of the ferry lease of the city, as granted by the county court of Cameron County, be sold at public auction to the highest bidder, on Monday next, 23rd instant, the purchaser to pay rent for the same to the city treasurer weekly in advance, the boats on said ferry to be held subject to forfeiture to the city for any failure of the contract, and that the contract to be forfeited on the part of the purchaser for any failure to comply with the terms of said contract.

Resolved, That the mayor be authorized to carry the above resolution into effect, and that the sum of $25 be appropriated as the auctioneer fee for selling said ferry priviledge.

On motion,

Resolved, That the mayor have power to employ council to act in the case of the City versus A. Glavecke.

* * * * * * *

(Page 128, book A.)

At a regular meeting of the city council of the city of Brownsville, held December 28th, 1850, at which there was a quorum present, the following action was had:

* * * * * * *

Ald. Conrad proposed the following resolution, which was on motion adopted.

Resolved, That a committee of three members of this board be appointed by the chair to reccommend a system for the disposal of
581 the lands belonging to the city or any part thereof, in lots (as claimed under the act of incorporation of the legislature of the State of Texas), as shall seem most conducive to the public interest, and that said committee report their action hereon to this board with all convenient speed.

Resolved, That the transcript of the records of the hon. ayuntamento of Matamoras, now in the possession of the city att'y, be immediately translated into the English language for the use of the city council, and that the city att'y be required to carry this resolution into effect. * * * Committee: Conrad, Nelson, and Wentz. * * *

Ald. Nelson move to reconsider the above motion. Carried.

On motion of Ald. Nelson,

Resolved, That a special com'it' of three be appointed, to whom shall be referred the resolution previously passed, recommending the translation of certain documents, said com'it' to report at the next meeting of the council upon the expediency of having said documents translated. Committee: Nelson, Buchanan, and Wentz. * * *

(Page 139, book A.)

At a regular meeting of the city council of the city of Brownsville, held January 11th, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

On motion,

Resolved, That all persons holding lands within the limits of the city of Brownsville adversely to the claims of said city be, and
582 they are hereby, notified and required to present within thirty days from this date the evidence of their title and claim thereto to the city att'y, to the end that the same may be submitted to this board for consideration and action as the nature of the case may respect*ful*ly require. * * *

Resolved, That the city att'y be authorized to receive propositions from any persons desiring to obtain the title of the city to any portion of land by any such person held or claimed in a bona fide character, after the evidences of title and claim to the same may have been submitted, as hereinbefore provided, and said att'y submit to this board from time to time any proposition he may thus receive, with his advice thereon, at the earliest opportunity after receiving the same.

* * * * * * *

(Page 140, book A.)

At a regular meeting of the city council of the city of Brownsville, held January 14th, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

Ald. Buchanan offered the following resolution:

Resolved, That F. Cumming, city attorney, be, and he is hereby, directed to proceed on to Galveston to ascertain how far, and in what respect, the interests and rights of the city are involved in the suit
583 now pending, Cavazos, Stillman, and others, and to take such measures as he may deem necessary for the protection of said interests and rights.

* * * * * * *

The above resolution being decided out of order, was withdrawn.

When, on motion, the reports of the committees were laid indefinitely on the table, and the committee discharged.

The above resolution being again offered, it was adopted by the following vote. * * * Ays—Conrad, Buchanan, Scarboroug, Wertisk—4. Nays—McClusky, Culbert, Garey, and Dye—4.

There being a tie, the chair voted aye. * * *

Ald. Scarborough moved to reconsider the above vote; which was carried;

When, after some discussion, the resolution was again adopted by the following vote: Ays—Conrad, Buchanan, Scarborough, & Werbiski—4. Nays—McClusky, Culbert, and Dye * * *—3.

* * * * * * *

(Page 145, book A.)

At a regular meeting of the city council of the city of Brownsville' held January 18th, 1851, at which there was a quorum present, the fol' lowing action was had:

* * * * * * *

Ald. Scarborough proposed the following preamble and resolution, which was on motion adopted, for three weeks:

Whereas, the city of Brownsville is the true and lawful owner of all the lands included within the corporate limits of said city, and * * *

584 Whereas several parties are claiming large portions of said lands, and the matters are involved in litigation without the prospect of a speedy termination, and many persons being desirous of obtaining titles to lots from this city:

Be it resolved, That all persons now in occupancy or possession of lots within the said limits who may be desirous of obtaining title thereto from this city are hereby notified to present their applications for the same to the city council as soon as may be pract'able.

* * * * * * *

(Page 150, book A.)

At a regular meeting of the city council of the city of Brownsville, held February 1st, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

His honor the mayor, to whom was *received* the matter of received proposals for repair of levee, reported progress. He also reported that owing to a slide in the levee he had employed Mexicans to grade the levee, to prevent a further slide.

* * * * * * *

(Page 168, book A.)

At a regular meeting of the city council of the city of Brownsville, held March 18th, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

585 Be it ordained by the city council of the city of Brownsville, That a tax be levied upon all sailing-vessels, steamboats, & other craft navigating the Rio Grande, which shall moor and land in any part of the corporate limits of said city, at the following rates:

On each sailing-vessel, st'boat, and other craft of 50 tons and under, * * * $2.50
Over 50 tons and under 100, * * * 7.00
" 100 " " " 200, * * * 10.00
" 200 " " " 300, * * * 15.00
* * * * * * *

(Page 169, book A.)

At a regular meeting of the city council of the city of Brownsville, held March 22nd, 1851, at which there was a quorum present, the following action was had:
* * * * * * *
An ordinance for the establishing and collecting of levee dues on goods, wares, and merchandise shipped from the levee to other ports.
* * * * * * *

(Page 170, book A.)

Be it further ordained, That this ordinance take effect from and after its publication.
* * * * * * *

(Pages 178 & 179, book A.)

At a regular meeting of the city council of the city of Brownsville, held April 28th, 1851, at which there was a quorum present,
586 the following action was had:
* * * * * * *
Resolved, That F. Cummings, city att'y, be hereby instructed to prosecute defences for this city in the causes of Israel B. Bigelow vs. The City of Brownsville and I. T. W. Mitchell vs. The City of Brownsville, now pending in the district court of this county, to the final termination of said suit, for which he shall receive a reasonable compensation, to be paid by this city, in addition to his regular salary of $500.00 per year as city att'y, provided that he is not acting as city att'y at the termination of those suits. * * *
On motion,
Resolved, That the city clerk be instructed to hand over to the city att'y all books and papers in his office that the city att'y may deem necessary for the proper conducting of his official business.
* * * * * * *

(Page 199, book A.)

At a regular meeting of the city council of the city of Brownsville, held July 12th, 1851, at which there was a quorum present, the following action was had:
* * * * * * *
The committee to whom was refer'ed the matter of bringing suit against persons who hold lands adversely to the city report as follows: * * *

To the President and Members of the City Council:

587 GENTLEMEN: * * * Your committee, to whom was refer'ed that portion of his honor the mayor's message as relate to the

authorizing of the city att'y to institute suit against such persons as hold labors of land within the incorporate limits adverse to the citie's interests, beg leave to report and recommend for adoption the following resolution: * * *

Resolved, That his honor the mayor be instructed to cause the city att'y to institute suit as soon as may be deemed advisable against such person or persons as claim land within the corporate limits adverse to the city's interests, and that the mayor be authorized, if necessary, to procure additional assistance in the prosecution of the same * * *

Respectfully submitted:

E. D. KATTMAN,
I. E. GAREY,
O. H. CUNINGHAM,
F. CUMMINGS,
Committee.

On motion report received, and resolution adopted.

* * * * * * *

(Page 206, book A.)

At a regular meeting of the city council of the city of Brownsville, held August 19th, 1851, at which there was quorum present, the following action was had:

* * * * * * *

Resolved, That the city att'y be directed to prosecute the claim of the city of Brownsville to the right of keeping and running ferries across the Rio Grande, between this city and Matamoras, and to oppose the application of Peter Culver for a ferry license across said river from a landing within the city limits, now on file in the county court of this county, and all other who may apply for ferry rights claimed by this city.

588

On motion,

Resolved, That R. S. Lemon, mayor of the city of Brownsville, be and he is hereby authorized to sign for the said city the bond required by law for a license to run a ferry between the city of Brownsville and the city of Matamoras, and affix the seal of the corporation thereto.

On motion,

Resolved, That the mayor and city att'y be authorized to employ assistant council to aid in prosecuting the claims of this city for ferry rights if they deem it advisable.

* * * * * * *

(Page 208, book A.)

At a regular meeting of the city council of the city of Brownsville, held August 23rd, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

Resolved, That the city att'y be directed to take the necessary steps to take up to the district court the decisions of the county court, granting a ferry license to Peter Culver, and to take all legal steps to enforce the rights of this city in opposition to the same, and that the mayor be authorized to execute, on behalf of this city, such bonds, with the seal of the city, as may be required in the prosecution of the same.

589

* * * * * * *

(Page 209, book A.)

At a regular meeting of the city council of the city of Brownsville, held August 27th, 1851, at which there was a quorum present, the following action was made:

* * * * * * *

Alderman McClusky in the chair:

His honor the mayor being present, he stated that he had convened the council for the purpose of taking measures to oppose the prayer of Messrs. Basse and Hord, praying for an injunction of the dist. judge against the decree of the county court in regard to the ferries.

When, on motion,

Resolved, That the city att'y be and he is hereby instructed to take all legal and necessary steps to prosecute and defend the rights of the city of Brownsville to all ferry rights within said city in all courts wherein the same may be called in question; and that the city att'y and his honor the mayor be authorized to employ assistant council if they deem it necessary.

* * * * * * *

(Page 211, book A.)

At a regular meeting of the city council of the city of Brownsville, held September 1st, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

590 Resolved, That in accordance with the recommendation of his honor the mayor, a committee of three be appointed with full powers to act and make such arrangements as they may deem necessary for running the Brownsville ferry under and in accordance with the license granted to the city of Brownsville by the county court of Cameron County, and that his honor the mayor be added to and requested to act in conjunction with said committee.

Whereupon the chair appointed Aldermen Dye, Kattman, and Cuningham to said committee.

* * * * * * *

(Page 212, book A.)

At a regular meeting of the city council of the city of Brownsville, held September 6th, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

Committee on streets and landings report as follows:

The committee on streets and landings beg leave to report that a large portion of the levee has caved in, and would recommend that no more be expended in the way it has heretofore been done, and would recommend that a breakwater be built above Mr. Culver's. * * *

(Signed) O. H. CUNINGHAM.

On motion, report received and laid on the table.

* * * * * * *

591 (Page 215, book A.)

At a regular meeting of the city council of the city of Brownsville,

held September 29th, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

Resolved, That a committee be appointed to ascertain how many farms there are enclosed within the city limits which are cultivated or improved as farms, and that said committee report as soon as pract'able, and as soon as the same is ascertained, that the quitclaim, right, title, and interest of the city in and to said lands be sold at public auction after 60 days' notice of the same be given and approved of by the vote of the citizens authorizing the city council to make said sale.

* * * * * * *

(Page 217, book A.)

At a regular meeting of the city council of the city of Brownsville, held October 4th, 1851, at which there was a quorum present, the following action was had:

* * * * * * *

To the hon. city council: * * *

Your committee, to whom was refer'ed the duty of ascertaining the numbers of cultivated labors of land lying within the corporate limits of the city of Brownsville, beg leave to report that they find it difficult to find out all the labores and the names of the persons occupy-
592 ing them. They thought it advisable to consult Mr. Dupony and engage his services, as he has surveyed the most of them and knows the names of the occupants. His report will be found accompanying this the report of your committee. Mr. Dupony says that he will not vouch for the entire correctness of his report, but believes it to be as correct as can be made without a survey. He says if the council desire a survey and map of the same, that he would be pleased to do it. Your committee would recommend that a survey and map be made.

* * *

GEO. DYE.
A. WERBISKI.

On motion, report received and adopted.

* * * * * * *

THE STATE OF TEXAS,
City of Brownsville:

I do hereby certify that the foregoing thirty-three pages of writing are true copies of original entries taken from the book A of the minutes of the proceedings of the former city of Brownsville, incorporated by an act of the legislature of Texas, approved January 24th, 1850, in my charge, as appear on pages 15, 23, 25, 39, 40, 51, 54, 56, 80, 86, 87, 98, 99, 101, 126, 127, 128, 139, 140, 145, 150, 168, 169, 178, & 179, 199, 206, 208, 209, 211, 212, 215, 217 of said book, as indicated in the margin of this transcript.

593 To certify which witness my hand and seal of the city of Brownsville on this 5th day of June, A. D. 1875.

[SEAL.]

LOUIS COWEN,
City Secretary.

The following appears on the foregoing exhibit:

"This is the exhibit marked A 1, shown to the witnesses Samuel P. Gelston and Louis Cowen, and referred to by them in their depositions, taken before me and attached hereto.

"H. A. MALTBY,
"*U. S. Commissioner, etc.*"

Statement of facts continued.—No. 202. Exhibit A 2. Transcript of minutes of present corporation of Brownsville.

(Page 238, book A.)

At a regular meeting of the city council of the city of Brownsville, held May 4th, 1853, at which there was a quorum present, the following action was had:

* * * * * * *

His honor the mayor reported to the council that he had, through an attorney, made application to the county court for a ferry license for the city, and also an application to the district court on behalf of the council for the trustship under the city charter. A petition from Juan Mariner for the ferry privilege across the Rio Grande was read, received, and refer'ed to the committee on street and landings.

* * * * * * *

594 (Page 249, book A.)

At a regular meeting of the city council of the city of Brownsville, held May 31st, 1853, at which there was a quorum present, the following action was had:

* * * * * * *

The meeting being called to order, his honor the mayor addressed the board, informing them that he had been successful with the prosecution of the claims of the city to the ferry privilege, that the attorney employed by him had obtained a license for the city, and he had convened them for the purpose of receiving instructions as to the steps to be taken by him in *given* the necessary bond.

* * * * * * *

(Page 252, book A.)

At a regular meeting of the city council of the city of Brownsville, held June 4th, 1853, at which there was a quorum present, the following action was had:

* * * * * * *

His honor, the mayor, addressed the council, stating that he had entered into contract with Conrad Blum for the running of the city ferry, on account of the city, for the wages of $150.

* * * * * * *

(Page 253, book A.)

At a regular meeting of the city council of the city of Brownsville, held June 12th, 1853, at which there was a quorum present, the following action was had:

* * * * * * *

595 Minutes was read and adopted. The contract as entered into by his honor, the mayor, and Council Bloom as regards running the city ferry was accepted with the following amendments: Said contract to and from month to month, as they council may deem proper, as also the sum of $500 be as a bond for the faithful discharge on the part of Conrad Bloom.

* * * * * * *

(Page 277, book A.)

At a regular meeting of the city council of the city of Brownsville, hild November 8th, 1853, at which there was a quorum present, the following action was had:

* * * * * * *

That Rin Garland and Franklin Cummings, esq., be and they are hereby appointed and employed as attorneys for and on behalf of the city of Brownsville, to intervene in any and all suits now pending in any of the State courts, wherein the land and trust property claimed by the city of Brownsville as trustee is brought in question, and also to take such further action in defending and prosecuting of the said rights, claims, by said city as trustee, as in their opinion they may deem advisable under the direction of this council; and it is further ordered that a committee of three alderman be appointed to confer, advise, and consult with said attorneys in relation to their said duties, and report from time to time to this council for their direction thereupon; which, on motion, was adopted.

* * * * * * *

596 (Page 281, book A.)

At a regular meeting of the city council of the city of Brownsville, held December 6th, 1853, at which there was a quorum present, the following action was had:

* * * * * * *

The mayor stated that he had the bills printed giving notice of sale of ferry, also read a bill for printing the same; which, on motion, was ordered to be paid; amount, $8.00 dollars. * * *

The mayor then read an ordinance introduced by Ald. Brown, but while under discussion Rin Garland, esq., presented himself and beg'ed leave to state to the council that a sale would take place of some property wherein the city was intrusted;

When, on motion, it was

Resolved, That Rin Garland, esq., be, and he is hereby, empowered to interceed' for the city and protect her rights at said sale. Which resolution was adopted.

On motion, the council then took a recess of five minutes; * * *

At the expiration of which time the council reappeared.

The ordinance under discussion was then taken up; which read as follows: * * *

An ordinance to provide the ways and means to prosecute and defend the suits which have been instituted or which it may be necessary to institute or defend in relation to the property situated within the limits of the city of Brownsville which has * * * been granted by the legislature of the State in trust for the purposes of erecting a
597 court-house and jail for the use of the county of Cameron and other purposes.

Be it ordained by the city council of the city of Brownsville, That the committee heretofore appointed by the city council for the purpose of attending to the prosecution and defence of suit or suits as are now pending or may hereafter be instituted in relation to the protection and defense of the landed property, appurtenances, and privileges belonging thereto, granted by the State of Texas to the corporation of Brownsville in trust for the objects and purposes mentioned in the

"acts" of incorporation, be empowered and authorized to draw upon the city treasurer for the whole amount of money now in the hands of said treasurer arising from the ferry fund, as a part of the trust funds, to sustain and defend the rights, title and claim of the trustee to the property so as aforesaid granted, and the warrant or warrants of the said committee on the treasurer shall be paid by him and be a sufficient voucher and receipt in the settlement of his amount or amounts in relation to said ferry and trust-fund, and the said committee is hereby authorized and directed to receive the whole of said sum of money so as aforesaid in the hands of said treasurer and * * * appropriate and pay the same, together with the amount now in their hands, to W. W. Dunlap, Rin Garland and F. Cummings attor-
598 neys for said trust, in such proportion as they, the said committee, shall deem just and equitable, and the said attorneys are hereby, after they shall receive the said money, to pay out of the said money, according to the proportion they may each receive, such sums of money as may be necessary for the purpose of paying costs of proceeding and taking testimony and defraying such other expenses as may be necessary in the prosecution and defence of said trust property until said funds shall be expended or other funds shall be received and provided for such expenses. Which on motion was adopted.

* * * * * * *

(Page 295, book A.)

At a regular meeting of the city council of the city of Brownsville, held May 6th, 1854, at which there was a quorum present, the following action was had:

* * * * * * *

That his honor the mayor be and he is hereby authorized to confer with attorneys, and get such legal advice and take such action in relation to the litigation now pending between the city of Brownsville and Messrs. Basse and Hord as he may deem expedient, and report the same to this council at its next regular meeting. Which resolution on motion was adopted.

* * * * * * *

599 (Page 299, book A.)

At a regular meeting of the city council of the city of Brownsville, held June 3rd, 1854, at which there was a quorum present, the following action was had:

* * * * * * *

The bill of F. Cummings for procuring license for the Brownsville and Freeport Ferry was read, when, on motion, it was ordered to be paid by draft on the treasury; am't $55.00 doll's.

* * * * * * *

(Page 303, book A.)

At a regular meeting of the city council of the city of Brownsville, held July 17th, 1854, at which there was quorum present, the following action was had:

* * * * * * *

The order of the Hon. James H. Webb, judge of the district court in

and for the county of Nueces, enjoining the city ferry, and appointed B. H. Fry receiver, was read (when having been discussed at some length); on motion, it was ordered that the mayor appoint a special committee of two to take into consideration the propriety of resisting said mandate. * *

Ald. Garey and Weeb were appointed on said committee.

* * * * * * *

(Page 309, book A.)

At a regular meeting of the city council of the city of Brownsville, held January 9th, 1855, at which there was a quorum present, the following action was had:

* * * * * * *

600 The bond of Antonio Dudia to run the city ferry was read, and on motion approved and ordered to be filed.

* * * * * * *

(Page 311, book A.)

At a special meeting of the city council of the city of Brownsville, held March 12th, 1855, at which there was a quorum present, the following action was had:

* * * * * * *

When, on motion of Alderman Kingsbury * * *

Resolved, That the mayor be, and he is hereby, authorized to cause a caveat to be issued against granting a patent to Basse and Hord for the town tract of the city of Brownsville.

Which, on motion, was adopted.

* * * * * * *

(Page 313, book A.)

At a regular meeting of the city council of the city of Brownsville, held May 2d, 1855, at which there was a quorum present, the following action was had:

* * * * * * *

It was further ordered that the mayor be, and he is hereby, authorized to have the suit recently decided in Corpus Christi, in which Basse and Hord and the city of Brownsville are parties, taken up to the Supreme Court by writ of error.

* * * * * * *

(Page 328, book A.)

601 At a regular meeting of the city council of the city of Brownsville, held November 3rd, 1855, at which there was a quorum present, the following action was had:

* * * * * * *

On motion, it was ordered that both the city ferries be moved from the present landings to some point below 13th street, 10 days' notice first being given to the proprietors; it was also ordered that a committee of three be appointed, whose duty it shall be to determine the places of landing for the ferry-boats, whereupon his honor the mayor appointed Messrs. M'rtin, Emmons, & Johnson said committee.

* * * * * * *

(Page 347, book A.)

At a special meeting of the city council of the city of Brownsville, held April 18th, 1857, at which there was a quorum present, the following action was had:

* * * * * * *

On motion, resolved, That the mayor be requested to provide, through the secretary of this council, all necessary copies of documents and papers of the records and archives of the city, that shall be found necessary to defend the title of the city to the property of the same, including the right of the city and of any of the contractors to the present market hall.

* * * * * * *

P. C. SHANKEY.
HENRY WEBB.
E. B. BARTON.
THOS. G. GREEN.

602 (Page 359, book A.)

At a regular meeting of the city council of the city of Brownsville held May 22nd, 1858, at which there was a quorum present, the following action was had:

* * * * * * *

Stephen Powers having received all the votes was declared elected city att'y by acclamation.

* * * * * * *

(Page 379, book A.)

At a special meeting of the city council of the city of Brownsville, held December 8th, 1858, at which there was a quorum present, the following action was had:

* * * * * * *

Resolved, That S. Powers, esq., city attorney, is hereby authorized to employ or substitute any other attorney to attend to the case of the city of Brownsville, as the suit of Basse and Hord, pending in the district court of Calhoun * * * County.

* * * * * * *

(Page 383, book A.)

At a regular meeting of the city council of the city of Brownsville, held January 15th, 1859, at which there was a quorum present, the following action was had:

* * * * * * *

It was resolved, That the city attorney be instructed to take such steps as he may judge expedient to bring the case of Basse and Hord against the city of Brownsville, recently decided in the district
603 court of Calhoun County, before the supreme court, and that the mayor be authorized to execute, on the part of the city, the requisite bond for the purpose, in connection with such sureties as may be required, and that the mayor be authorized to pay, by drafts on the city treasurer or otherwise, such sum as may be necessary for perfecting the record, which amount is hereby appropriated.

Adopted.

* * * * * * *

(Page 86 & 87, book B.)

At a special meeting of the city council of the city of Brownsville, held March 28th, 1867, at which there was a quorum present, the following action was had:

* * * * * * *

His honor stated that he had called the aldermen in council to consult them and lay before them a notice, drawn up by Judge Powers, attorney for the city in a suit, now pending before the supreme court of the State, vs. Basse and Hord, relative to a tract of land now about being sold at auction, said tract of land being a part of the property in suit, said notice being to the effect that the purchaser, in case the suit be decided in favor of the city, would have no title to the same.

His honor concluded by requesting S. Powers, esq., to explain to the council his cause of action in the matter.

Judge Powers rose, and in a few words inform' the council of
604 the case now pending before the supreme court of Texas, between the city of Brownsville, plaintiff in error, vs. Basse and Hord, def'ts in error. * * * The suit is an action brought by the def'ts in error originally in the district court of Cameron County, from which it was removed to Nueces, and finally to Calhoun, for trial. That in a few days at the most the decision of the supreme court would ar'ive, and that he considered it to be his duty, as attorney for the * * * city in the case, to request the mayor to publish said notice, as the city was still defending the suit. * * *

Mr. Basse rose and informed the council that he had bought that property of ten acres of lands, and had not only a legal title, but also a possessory title; that the property had been in his possession for over eighteen years, and that by that lapse of time the city had lost all title to the property. After giving the city council the whole history of the tracts of land alluded to, Mr. Basse concluded by informing the council that if such notice was made public it would depreciate the value of the property, and that the alderman would render themselves personally responsible for damages, as he had full right to the property in accordance with the laws of Texas, which accord these rights to any person having undisputed possession for five years. * * * After
605 hearing the explanation given by S. Powers, esq., in behalf of the city, and Mr. Basse, on motion of Ald. Werbiski, the city council went into secret. * * * The city council arose.

Ald. Glavecke moved that a committee of three be appointed by his honor the mayor to wait upon Mr. Basse and ask him to postpone the sale of the tract of land in question until such time as the decision of the supreme court is received.

The motion was carried; and the mayor appointed aldermen Brown, Werbiski, and Glavecke, with instructions to report at 4 p. m. Friday, 29th inst.; * * * for notice to be given verbally. * * *

Pending the adoption of the notice to be given verbally by the city marshall, the city council adjourned to eight o'clock p. m. at the regular meeting.

* * * * * * *

(Pages 87 & 88, book B.)

At a special meeting of the city council of the city of Brownsville, held March 29th, 1867, at which there was a quorum present, the following action was had:

* * * * * * *

The special committee appointed by the mayor to call upon Mr. Basse reported that Alderman Glavecke, a member of the committee, had called upon him, Mr. Basse, in the name of the committee, and asked him if he was willing to postpone the public sale of the tract of
606 land in question until the decision of the supreme court is known, and that Mr. Basse did not entertain the proposition. * * *

On motion of Ald. Champion the special committee was discharged.

The city council then made a thorough examination of the case, "The City of Brownsville, plaintiff in error, vs. Basse and Hord, defendants in error."

Upon the question whether notice would be given to the public of the suit now pending, the yeas and nays were called, with the following result: Yeas—Kenedy, Werbiski, Brown, Willuan, Glavecke. Nays—Putegnat, Champion, Miller. * * *

Upon the question whether handbills would be printed or notice be given by the city marshall verbally and publicly at the time of the sale, the yeas and nays were called, which resulted as follows: * * * Yeas—Kenedy, Werbiski, Brown, Willman, * * * Putegnat, Champion, Glavecke, Miller—eight.

* * * * * * *

(Page 89, book B.)

At a regular meeting of the city council of the city of Brownsville, held Marcn 29th, 1867, at which there was a quorum present, the following action was had:

* * * * * * *

Motion of Alderman Brown that the last motion be reconsidered, was carried.

Motion of Ald. Kenedy that the question "whether notice would be given or not" be reconsidered was carried.

607 The secretary read the notice written for the purpose of notifying the public of the case pending in the supreme court of Texas between the city of Brownsville and Basse and Hord, and that the tract of land offered for sale is comprised in the suit. * * * Alderman Brown presented the following resolution:

Whereas after careful examination of the notice presented by his honor the mayor, for the purpose of notifying the public that the ten acres of land now about to be sold are comprised within the tract of land in a suit now pending before the supreme court between the City of Brownsville vs. Basse and Hord, the council is of the opinion that the printed brief and arguments of the case were sufficiently circulated, as well as the knowledge of that case: Therefore,

Be it resolved that no further notice is necessary.

* * * * * * *

(Page 126, book B.)

At a regular meeting of the city council of Brownsville, Texas, held January 20th, 1868, at which there was a quorum present, the following action was had:

* * * * * * *

The committee on public grounds and buildings reported favorably on the petition of the Lady Superior of the Incarnate Word Convent, praying that the alley-way in block No. 34 be closed for the benefit of the convent.

608 On motion of Alderman Glavecke the report was received, and the said alley-way in block 34 was declared closed, and the secretary required to notify the Lady Superior of the fact.

* * * * * * *

(S'gn'd) WM. NEALE,
Mayor.

(Page 147, book B.)

At a regular meeting of the city council of the city of Brownsville, held November 28th, 1868, at which there was a quorum present, the following action was had:

* * * * * * *

On motion of Alderman Putegnat, the propriety of the city claiming the ferry rights between this city and Matamoras was referred to the committee on streets and landings, with instructions to consult with the city attorney, to report at next regular meeting.

* * * * * * *

(Page 151, book B.)

At a special meeting of the city council of the city of Brownsville, held February 26th, 1869, at which there was a quorum present, the following action was had:

* * * * * * *

Alderman Werbiski offered the following preamble and resolution, which were unanimously carried, to wit:

Whereas it has come to the knowledge of the city council of the city of Brownsville that the assistant quartermaster stationed at
609 the post of Fort Brown has instructions to pay a large sum of money to Maria Josefa Cavazas as rent for the use of lands occupied by the government for the garrison of Fort Brown; and whereas the question of the validity of the title of the said land is now pending in the supreme court of the State of Texas: Therefore, be it

Resolved, That his honor the mayor be instructed and authorzied to protest in the name of the corporation of the city of Brownsville to the Secretary of War against the payment to Maria Josefa Cavazas any money as rent for said lands until the litigation now pending is decided.

* * * * * * *

(Page 279, book B.)

At a regular meeting of the city council of the city of Brownsville, held March 27th, 1871, at which there was a quorum present, the following action was had:

* * * * * * *

A resolution was next introduced authorizing and requesting the acting mayor to appoint a special committee to inquire into and report upon the practi'bility of establishing a city ferry between Brownsville and Matamoras.

Adopted.

The acting mayor appointed Alderman Henry Aphold, Henry C. Hume, and Elisha Guidon on the committee.

* * * * * * *

610 (Page 327, book B.)

At a special meeting of the city council of the city of Brownsville, held April 3d, 1872, at which there was a quorum present, the following action was had:

* * * * * * *

The minutes of the last meeting were read, amended, and approved.

The mayor informed the council that the object of the meeting was for the purpose of receiving a communication from Messrs. Powers and Maxan, attorneys at law, in relation to the late decision of the supreme court in the case entitled "The City of Brownsville, in error, vs. Basse and Hord, defendants in error," and to take such action as might be deemed proper in the premises.

Hon. Nestor Maxan filed with the council a copy of the above-mentioned decision, also a copy of the brief submitted to the supreme court by Messrs. Powers and Maxan. He also explained the present condition of the case to the board.

On motion a special committee of three was appointed to act in conjunction with Messrs. Powers and Maxan in obtaining a license to establish a ferry between this city and Matamoras. * * * Committee, H. S. Rock, H. Aphold, and H. C. Hume.

On motion the committee was authorized to draw on the city treasurer for the amount required for payment of said license, and to make such publication for the protection of the rights of the city as they may deem advisable.

* * * * * * *

611 (Page 328, book B.)

At a regular meeting of the city council of the city of Brownsville, held April 8th, 1872, at which there was a quorum present, the following action was had:

* * * * * * *

The committee appointed at the last meeting to obtain a ferry submitted a report, informing the board that they had procured a temporary license and paid the sum of one hundred dollars for the same. * * *

On motion of Alderman Aphold, the following resolution was adopted:

Resolved, That the thanks of this council be, and are hereby, extended to Mrs. Powers and Maxan, Alexander and E. J. Davis, for their watchfulness and unswerving fidelity to the city interests committed to their care.

* * * * * * *

(Page 334, book B.)

At a regular meeting of the city council of the city of Brownsville, held July 9th, 1872, at which there was a quorum present, the following action was had:

* * * * * * *

A communication from Hon. S. Powers, accompanied by a copy of the late decision of the supreme court in the case of Basse and Hord and the city of Brownsville, was read, and referred to the following special committee, viz: Krause, Nordhausen, & Rock.

* * * * * * *

612 (Page 335, book B.)

At a regular meeting of the city council of the city of Brownsville, held August 12th, 1872, at which there was a quorum present, the following action was had:

* * * * * * *

The committee appointed to examine and report upon the communication of Hon. S. Powers submitted the following:

Your committee appointed to examine the communication of the Hon. S. Powers would respectfully report that they have considered the matter, and would recommend that the attorney for the city in the suit, Mr. S. Powers, be requested to act in behalf of the city as required in the premises. * * *

Respectfully submitted.

(Signed) G. KRAUSE.
C. NORDHAUSEN.
H. S. ROCK.

* * * * * * *

(Page 339, book B.)

At a special meeting of the city council of the city of Brownsville, held October 16th, 1872, at which there was a quorum present, the following action was had:

* * * * * * *

To his honor the mayor and the city council of the city of Brownsville: * * *

GENTLEMEN: * * * Your committee, appointed to examine
613 the bills of the city of Brownsville in the case of The City of Brownsville vs. The Brownsville Levee Company, No. 1021, and The City of Brownsville vs. Maria Josefa Cavasas, No. 1027, having examined them, recommended the payment of the same, amounting to the sum of ($43.70) forty-three dollars and seventy cents.

* * * * * * *

Respectfully submitted.

H. S. ROCK.
GEO. KRAUSE.

* * * * * * *

(Pages 356 & 357, book B.)

At a regular meeting of the city council of the city of Brownsville, held December 30th, 1872, at which there was a quorum present, the following action was had:

* * * * * * *

Alderman George Krause offered the following resolutions:

Resolved, That Messrs. Powers and Maxan, attorneys for the city, be, and they hereby are, authorized to employ, subject to the approval of the mayor and city council, local co'nsul in the city of Washington, in the case pending in the Supreme Court of the United States on writ of error.

Resolved, 2nd, That the said attorneys be, and they are hereby, instructed to take all due measures for the prosecution of the suit now pending in the district court of this county for the assertion of the city title to the town tract, and to procure at the least possible expense all necessary evidence and proofs to sustain said cause. * * *

614 GEORGE KRAUSE.

On motion, the city attorneys were called before the council to explain the condition of the city laws uit and the motive of the resolutions. * * *

Messrs. Powers and Maxan appeared before the council, and stated that it would be necessary to have local counsel in Washington to attend to the interests of the city of Brownsville in the lawsuit pending in the United States Supreme Court, and * * * they satisfying the city council of the objects of the city council, it was moved that the resolutions be adopted.

Carried.

* * * * * *

(Page 371, book B.)

At a regular meeting of the city council of the city of Brownsville, held March 3d, 1873, at which there was a quorum present, the following action was had:

* * * * * * *

A draft for $50.00, coin, issued in favor of the city attorneys, to defray expenses for evidence procured in connection with the suit of The City vs. Cavazos, and others, was on motion audited * * * * * * and execute a contract in writing with the said Thos. J. Durant on the terms above stipulated, and to affix the seal of the city thereto.

Carried.

* * * * * * *

615 (Page 375, book B.)

At a special meeting of the city council of the city of Brownsville held March 13th, 1873, at which there was a quorum present, the following action was had:

* * * * * * *

The counsel for the city in the case of E. Basse, plaintiff in error, against the City of Brownsville, now pending in the Supreme Court of the United States, laid before the city council the proposition of Thos. J. Durant, esq., of Washington, D. C., to defend the rights and interests of the said city in said case for the sum of one hundred dollars, cash, paid at once, and in case of said case being decided favorably to the city, either upon motion to dismiss it or upon adjudication on the merits, to be paid the further sum of five hundred dollars within ninety days after such decision; and in case of the unfavorable decision of said suit to the city, then to be paid the sum of two hundred dollars in addition to the sum of one hundred; and further, that the brief in said case to be published by the said Thos. J. Durant, esq., to be paid at the rate of one dollar and twenty-five cents for each page thereof, independently of the said fees; and the said proposition being of the approval of the said city council, after the vote taken thereon it was, on motion of Alderman Neale, duly seconded:

Resolved, That the said proposal is now accepted, and the mayor of the city hereby authorized to sign.

* * * * * * *

616 THE STATE OF TEXAS,
City of Brownsville:

I do hereby certify that the foregoing thirty-eight pages of writing are true copies of original entries, taken from the Books A and B of the minutes of the proceedings of the city of Brownsville, as appear on

pages 238, 249, 252, 253, 277, 281, 295, 299, 303, 309, 311, 313, 328, 347, 359, 379, 383 of book A, and pages 86, 87, 87, 88, 89, 126, 147, 151, 279, 327, 328, 334, 335, 339, 356, 357, 371, 375 of book B, in my charge, and as indicated in the margin of the transcript.

To certify which witness my hand and the seal of the city of Brownsville, this 5th day of June, A. D. 1875.

[SEAL.]

LOUIS COWEN,
City Secretary.

The following appears on the foregoing exhibits:

This is exhibit, marked A 2, shown to the witness Louis Cowen, and referred to by him in his deposition taken before me, and hereto attached.

H. A. MALTBY,
U. S. Commissioner, etc.

Statement of facts continued.—Direct and cross interrogatories pro-
617 *pounded to Alexander Werbiski, James G. Browne, & John Castaing.*

And plaintiff also read in evidence the testimony taken by depositions of James G. Browne, Alexander Werbiski, and John Castaing, as follows:

In the U. S. circuit court, eastern district of Texas, at Galveston.
Transferred from Brownsville.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } No. 202.

Interrogatories to be propounded to Alexander Werbiski, James G. Browne, and John Castaing, witnesses, who reside in the county of Cameron, and the State of Texas, whose answers when taken are to be read in evidence on behalf of the plaintiff, on the trial of the above-entitled cause.

Interrogatory 1. State your name, age, and how long have you lived in Brownsville, Texas, and its vicinity.

Int. 2. Do you know the defendants Maria Josefa Cavazos, Charles Stillman, and William G. Hale? How long have you known them or either of them? Did you know Samuel A. Belden, deceased, and Israel B. Bigelow, deceased, and when did they die, respectively, and how long had you known them or either of them?

Int. 3. State, if you know, when or on what date did the evacuation of Brownsville aforesaid, by the Confederate troops, take place under Gen. H. P. Bee.

Int. 4. State, if you know, when or on what date did the first occupation of Brownsville aforesaid by the United States troops take place, under the command of Gen. N. P. Banks.

Int. 5. State, if you know, when or on what date did the evacuation of Brownsville aforesaid by the United States troops take place in the year 1864.

Int. 6. Where were you during the period of the first occupa-
618 tion of the said city by the United States troops?

Int. 7. If you shall have stated that Brownsville was first occu-

pied by the United States troops in the beginning of November, 1863, and disoccupied subsequently by them towards the end of July, 1864, state, if you know, where the defendants Maria Josefa Cavazos, Charles Stillman, and William G. Hale, and the said Samuel A. Belden, and the said Israel B. Bigelow were during the period of said first occupation of Brownsville by the United States forces. Which, if any of them, was in Brownsville or on the Brownsville lands during said period, and how long?

Int. 8. Do you know who had charge of the lands claimed by the said defendants, and by the said Belden to the lands of Brownsville, during the said first occupation of said city by the troops of the United States? If yea, state who it was who had or held, if any one, the possession of the said lands during said period. Which of the defendants, or who for them or either of them, had or held possession of said lands while said city was occupied as aforesaid? What private person or persons had or held possession of said lands during the time enquired about? What was the condition of the said city of Brownsville, with regard to its inhabitancy by the people generally, during the said first occupation by the United States troops? What became of the said de-
619 fendants Cavazos, Stillman & Hale, and the said Samuel A. Belden and the said Israel B. Bigelow, or where were they during said occupation? What do you know about the said above-named persons or either of them being in Brownsville or on the Brownsville lands during said occupation? State fully, and if you say that they or either of them were in Brownsville or on its lands during said time, state how long they or either of them remained in said city or on said lands.

Int. 9. Who had charge and possession of the American ferry or ferries at Brownsville during the time of said first occupation by the United States forces? Who ran or controlled the said ferry or ferries, and who received the proceeds, so far as you know? Which of the said defendants and the said Samuel A. Belden, or who for them, had charge or possession or control of the said ferries during the said occupation.

Int. 10. Who was mayor of the city of Brownsville at the time of the first occupation and during the same?

Int. 11. State, if you know, when or on what date, more or less, did the second and last occupation of Brownsville aforesaid by the United States troops take place after the surrender of General R. E. Lee?

Int. 12. Where were you, from the time of the said second and
620 last occupation of Brownsville, down to, say, the beginning of 1866? And where were the defendants Maria Josefa Cavazos, Charles Stillman, and William G. Hale, and the said Samuel A. Belden, or either of them, during the said last mentioned time? Which, if any of them, was in Brownsville during said period, and for how long?

Int. 13. Do you know who had charge of the claim of the said defendants and of the said Belden to the lands of Brownsville during the time last enquired about? If yea, state who it was, who had or held, if any one, the possession of the said lands during said period. Which of the defendants, or who for them or either of them, had or held possession of said lands during said time? What private person or persons had or held possession of said lands during the time last enquired about? What became of the said defendants Maria Josefa Cavazos, Charles Stillman, & William G. Hale, and the said Samuel A. Belden, or where were they during the said period? What do you know of the said persons last above named or either of them being in Brownsville, or on the Brownsville lands, during the said time? State fully.

Int. 14. Who had charge or possession of the American ferry or ferries

at Brownsville during the period between the said second and last occupation of the said city by the United States troops and, say,
621 the said month of January, 1866? Who ran or controlled the ferry or ferries, and who received the proceeds, so far as you know? Which of the said defendants and the said Samuel A. Belden, or who for them, had charge or possession or control of the said ferry or ferries during the said period of time; and if you shall say that they or either of them, or some one for them, did have such charge or possession or control, please state at what time specifically they had the same, and when the same commenced.

Int. 15. Who was mayor of the city of Brownsville about the months of July and August, 1866, and afterwards during, the same year?

Int. 16. Do you know the firm or association commonly known as the Brownsville Land Company? If yea, state who composed the same at various periods.

Int. 17. Are you acquainted with the lands composing the town tracts of the city of Brownsville, and since when have you known them?

Int. 18. State whether you are acquainted with the lands to which said Brownsville Land Company and the said defendant Maria Josefa Cavazos set up claim within the town tracts of Brownsville? If yea, state what enclosures, if any, there are around the said tract or around the land claimed by the said land company or the said Cavazos, and
622 how long is it since such enclosures were placed or made there, and have such enclosures, if any, remained continuously to the present time? State fully all you know about such enclosures. State what lot or lots in the city of Brownsville are held under enclosure by the said land company or the said defendant Cavazos, and how long have such enclosure or inclosures existed, and have they remained continuously to the present time? State particularly what lot or lots are so enclosed by said defendants, and when they were so enclosed, if any.

Int. 19. Do you know Levee street or the levee in Brownsville? Since when? What, if any, exclusive use has the said Brownsville Land Company or the said Cavazos made of the said Levee street or levee? What has been the nature or character of said Levee street or levee as to public travel thereon since you knew the same, and what is it now? Do you know whether the city of Brownsville has ever held and run or controlled the ferry or ferries across the Rio Grande at Brownsville? If yea, state all you know concerning the last question, and give dates and all particulars you may remember.

20. Do you know the piece of land in the Brownsville town tract
623 known as the garrison grounds of Fort Brown? State who occupied the same from, say, 1848 to 1861? From 1861 to November 3rd, 1863? From November 3d, 1863, to Nov. 6th, 1863? From November 6th, 1863, to the end of July, 1864? From the end of July, 1864, to, say, May or June, 1865? Who has since then occupied the same? State what were the enclosures, if any, around the said garrison grounds during each of the periods above enquired about? Do you know what houses, quarters, or buildings were on the said garrison grounds during the said periods? State under what authority, or by agreement with whom, did the United States troops enter upon the said garrison grounds and occupy the same during the said periods enquired about?

21. Do you know the market square and market house in Brownsville; and, if yea, since when? Who built it? On what land? Where is the same situated as regards locality? Who established the plaza or square around it? Who collects the rents arising from the said mar-

ket house? Under what claim does the city of Brownsville hold and possess said market house & square and the land the same is built on, and since when has the said city so held and possessed the same?

22. Do you know any other matter or thing of advantage to
624 the plaintiff herein? If yea, state the same as fully as if specially interrogated thereunto.

POWERS & MAXAN.
Att'ys for Pl'ff.

Service had upon me this 10th day of June, A. D. 1875, by handing me the foregoing direct interrogatories for the purpose of crossing the same.

B. B. SEAT.

Cross-int'g's propounded to James G. Browne, Alexander Werbiski, and John Castaing.

In the U. S. circuit court for the eastern district of Texas, at Galveston, transferred from Brownsville.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS, CHAS. STILLMAN, et als. } No. 202.

The defendants herein, saving and reserving any and all exceptions to the direct interrogatories herein propounded by plaintiff, as to competency, relevancy, admissibility or legality of such interrogatories, as well as to the manner of taking and returning the answers thereto, now propound to the witnesses, Alexander Werbiski, James G. Brown, and John Castang, the following cross-interrogatories, the answers to which will be read in evidence in behalf of the defendants on the trial of the above-entitled cause.

Cross-int. 1. If, in answer to the fifth and sixth direct interrogatories, you shall state that the city of Brownsville was evacuated by the Federal troops in the year A. D. 1864, and that you were in the city of Brownsville during such occupation, please state where you were
625 previous to such occupation by the said Federal troops, and whether or not you were in the city of Brownsville during the occupation of said city by the Confederate troops; and state, also, the particular years the said city was occupied as aforesaid by the said Confederate troops.

Cross-int. 2. If, in answer to direct interrogatory the seventh, you shall say that defendants Cavazos, Stillman, Belden, and Hale, and also the said Israel B. Bigelow, were absent from the city of Brownsville during the period of its occupation by the United States forces, please state, if you know, where the said parties had gone, whether temporarily or permanently; and for what reason, if you know, were the said parties away from said city?

Cross-int. 3. If you shall have stated that you were in the said city of Brownsville during the occupation of said city by United States forces in the years A. D. 1863 & 1864, please state where you were previous to that time, and were or were you not in the city of Brownsville aforesaid during the occupation of said city by the Confederate troops; and, if yea, in what years were you in said city while it was occupied by Confederate troops as aforesaid?

Cross-int. 4. State, if you know, whether or not there were citizens

of Brownsville residing temporarily in Matamoras, Mexico, dur-
626 ing the occupation of said city of Brownsville by Confederate troops as aforesaid; and, if yea, who were they, how long did they remain away from said city, and when did they return to the same?

Cross-int. 5. If, in answer to cross-interrogatory four, you shall name citizens of Brownsville who resided temporarily in Matamoras, Mexico, during the period of the occupation of said city of Brownsville by Confederate troops as aforesaid, please state if said citizens abandoned their property in Brownsville, and what became of the same?

Cross-int. 6. During the period of the occupation of said city of Brownsville by Confederate troops as aforesaid, do you know if there were a Confederate States receiver in said city; and, if yea, who was such receiver, and what property in said city, if any, was seized by the said receiver, to whom did said property belong, and what disposition, if any, was made of said property by the said receiver?

Cross-int. 7. If, in answer to direct interrogatory the seventh, you shall say that defendants, Cavazos, Stillman, Belden, and Hale, and the said Israel B. Bigelow, or either of them, were absent from the said city of Brownsville during the occupation thereof by Federal troops, state, also, if any or all of said parties were or were not also absent during the occupation of said city by Confederate troops as aforesaid, how long they remained absent from said city, and when they returned
627 to the same, if at all?

Cross-int. 8. State if the defendants, or either of them, or the said Israel B. Bigelow, during the occupation of the said city by troops as aforesaid, or at any other time, abandoned their possessions and property in said city, or the lands belonging to the same, and was any of the property or lands of the said defendants, or either of them, seized by the said receiver, or at any time confiscated as abandoned property, during the occupation of said city either by the said Confederate troops or Federal troops; and, if yea, state when and by whom such seizure or confiscation was made, how such property was disposed of, and all the circumstances attending such seizure or confiscation.

Cross-int. 9. What was the condition of the country generally at the time of the occupation of said city by troops as aforesaid, either Federal or Confederate; and what were the reasons why defendants, or either of them, or any other citizen or citizens of said city, absented themselves therefrom during the said occupation? State fully and distinctly all you may know in regard to the subject of this inquiry.

Cross-int. 10. If, in answer to any of the direct interrogatories herein, you shall say that defendants, nor any of those composing the Brownsville Land Company, at any time had not control of the Amer-
628 ican ferry or ferries at Brownsville, or of the levee or Levee Street, state who did control the same, and when, how long, and all the circumstances, and why the Brownsville Land Company did not exercise control over the same during such time.

Cross-int. 11. If, in answer to any of the direct interrogatories herein, you shall say that there are enclosures on any of the lands included in the Brownsville tract, please state fully who made such enclosures, and when and by what authority the said enclosures were made, and from whom the said authority was obtained, if any.

Cross-int. 12. State, if you know, whether or not the said Brownsville Land Company have made any enclosures on any of the said landed portions of said city, or if any of said land company has established enclosures on the lands of the said town tract. State fully and distinctly all you may know in regard to the subject of this inquiry.

Cross-int. 13. If, in answer to direct interrogatory twenty-one, you shall state that you are acquainted with the market-house in the city of Brownsville, and the plaza on which the same is built, please state if you know from whom the land on which said market is built was acquired by the said city, when it was so acquired, and how and for what particular purpose.

629 Cross int. 14. State if you know of any other land or lands acquired by said city; and, if yea, what part of said lands, when it was obtained, from whom it was so obtained, whether by purchase, gift, or otherwise, and for what purpose?

Cross-int. 15. Do you know or can you state any other matter or thing in relation to the questions at issue between the parties hereto? And, if you do, state fully and distinctly all you know which may be of benefit or advantage to defendants.

B. B. SEAT,
For Defendants.

Deposition of Alexander Werbiski.—Answers to direct int'g's.

Suit pending in the circuit court of the United States for the eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } No. 202.

Answers and depositions of Alexander Werbiski, who resides in Cameron County, State of Texas, to the accompanying interrogatories propounded to him in the above-entitled cause, taken by H. A. Maltby, commissioner of the said circuit court to take affidavits and bail, in accordance with the agreements of counsel for the respective parties in the said cause.

The said witness, Alexander Werbiski, having been by me, the said commissioner, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the said direct
630 and cross-interrogatories, and being carefully examined by me, the said commissioner, did depose and testify as follows:

Interrogatories propounded to Alexander Werbiski:

1. To the 1st interrogatory he answers: Alexander Werbiski; fifty-nine years of age. I have lived in Brownsville and vicinity since 1848.

2. To the 2nd interrogatory he answers: I know the defendants, Maria Josefa Cavazos, Charles Stillman, and William G. Hale. I have known Maria Josefa Cavazos since 1853, Charles Stillman since 1848, and William G. Hale since 1851. I knew Samuel A. Belden, deceased, and also Israel B. Bigelow, deceased. Belden died about 1871, and Bigelow in 1869; knew them since 1848.

3. To the 3rd interrogatory he answers: November 3rd, 1863.

4. To the 4th interrogatory he answers: November 6th, 1863.

5. To the 5th interrogatory he answers: In the end of July, 1864.

6. To the 6th interrogatory he answers: In Brownsville, Texas.

7. To the 7th interrogatory he answers: During the occupation enquired about Maria Josefa Cavazos lived in Matamoras. Charles Stillman left Brownsville when said occupation took place and removed to

Matamoras, where he remained. William G. Hale was not in
631 Brownsville during that time, but was understood to be in the interior of Texas and at times in Mexico. Belden also at the occupation of Brownsville enquired about removed to Matamoras and remained there during the whole of it. Bigelow did the same. Neither of the said defendants was in Brownsville nor on its lands during said occupation.

8. To the 8th interrogatory he answers: Nobody had charge of their claim during said time. No one had or held the possession of said lands during said period. Neither of the said defendants, nor any one for them, had or held possession of said lands during said occupation. No one had or held possession of the same. Most of the inhabitants of any standing had left the city and remained away, with the exceptions of foreigners. The said defendants, Belden and Bigelow, were all in Matamoras during said time, except Hale, who was reported to be in the interior of Texas and in Mexico at times. Neither of the said defendants, nor Belden nor Bigelow were in Brownsville or on its lands during the said occupation.

9. To the 9th interrogatory he answers: The United States military officials had possession of the said ferry; there was only one ferry run. The United States Government ran the ferry and collected the proceeds.
Neither of the said defendants, nor the said Belden nor any one
632 for them had charge or possession or control of the said ferry during said occupation.

10. To the 10th interrogatory he answers: George Dye was mayor at the time, but shortly after the military authorities of the United States took control of the government of the city by provost marshal.

11. To the 11th interrogatory he answers: Mayor, June, 1865.

12. To the 12th interrogatory he answers: At the beginning of said occupation I was in Matamoras by reason of the previous Confederate occupation of said city, and about six months after the said second occupation by the United States forces I returned to Brownsville, where I have remained ever since. During said occupation Mr. Cavazos was in Matamoras where she lived; Stillman was in New York, to which place he removed about that time and has remained there to the present time, and Belden was in Matamoras during said time. I do not remember. Hale was not in Brownsville, but was understood to be in Texas and Mexico during all that time.

13. To the 13th interrogatory he answers: I do know the United States military authorities had such charge. I do not remember how long. Neither of the said defendants nor Belden, nor any one for
633 them had possession of the said lands then. I do not remember the exact day when Belden came back. Nobody but the said military authorities had any possession during that time. I cannot remember particularly when they gave up such possession. I do not know what private person or persons had possession after the possession of the military authorities, nor which of the defendants, or who for them. I have stated in my previous answer where the said defendants were during said period, and also as to Belden. Neither Mrs. Cavazos, nor Stillman, nor Hale were in Brownsville nor on its lands during said time. Belden was in Matamoras during that period, and when he came back to Brownsville I do not remember precisely.

14th. To the 14th interrogatory he answers: The provost marshal of the United States troops held the same. The provost marshal ran it while he held it and collected the proceeds. At one time neither the said defendants, nor Belden, nor any one for them held it. I do not

remember when they obtained the possession again. I cannot state more specifically the dates or time.

15. To the 15th interrogatory he answers: Josiah Moorehead.

16. To the 16th interrogatory he answers: I do. First, Charles Stillman, Samuel A. Belden, and Jacob Mussina; afterwards, Elisha
634 Basse and R. H. Hord; then R. H. Hord and M. Kenedy; then Stillman and Belden; and then Stillman, and Belden, and William G. Hale; and after the death of Belden, Stillman and Hale, who compose the firm now.

17. To the 17th interrogatory he answers: I am acquainted with said lands. Have known since Brownsville was founded, about 1848.

18. To the 18th interrogatory he answers: Neither the said company nor Mrs. Cavazos have any enclosure or enclosures around the lands claimed by them, nor are there any around the town tracts of Brownsville. The said land company have not city lots under enclosure. Neither has Mrs. Cavazos, except, I think, a lot on Elizabeth street which I believe she holds under fence.

19. To the 19th interrogatory he answers: I do know Levee street on the levee in Brownsville since it was first laid out. Neither the said land company nor Mrs. Cavazos have had any exclusive use of said Levee street or levee. The said Levee street or levee has been a public thoroughfare for persons, animals, and vehicles since I have known the same, and it is now. It has never been obstructed by any one. The city of Brownsville ran the ferry at Brownsville in 1850 to 1851, 1853 to 1854, and 1854 to 1855. I remember these facts generally, but cannot particularize further than as stated.

635 20. To the 20th interrogatory he answers: I do not know the said garrison grounds. The United States government occupied the same from 1848 to 1861. From 1861 to November 3rd, 1863, the Confederate States government. From Nov. 3d, 1863, to Nov. 6th, 1863, nobody occupied the same. From Nov. 6th, 1863, to the end of July, 1864, the United States forces had camps on said grounds, and from the end of July, 1864, to say May or June, 1865, the Confederate States government occupied the said grounds, and since then they have been occupied by the United States government. The said grounds were enclosed from 1848 or 1849 to 1864. During the war the fences were destroyed. Enclosures were then next put up about 1867. From 1848 or 1849, there were a number of buildings, for storehouses, quarters, hospitals and guard-house up to 1863, when the first evacuation of the Confederates took place. They were then nearly all burnt down by those troops. There was only one building left there from that time until the quarters and other garrison buildings were rebuilt after the war by the U. S. gover'ment. I do not know under what authority the U. S. gover'ment entered into possession as enquired of, but I have always understood from U. S. quartermaster, that the gover'-
636 ment held the possession for whoever might be the owner of the land.

21. To the 21st interrrogatory he answers: I have known the market-house and square of Brownsville since 1850, or thereabouts. The city of Brownsville built the said market-house and laid out the square, and has held the same ever since, claiming it under its title from the State of Texas, in the same manner as it claims all of the lands of its town tract.

22. To the 22nd interrogatory he answers: No.

Deposition of Alexander Werbiski.—Answers to cross-int'g's.

Alexander Werbiski cross-interrogated:

1. To the 1st cross-interrogatory he answers: Previous to the occupation of Brownsville by the Federal troops, at the time enquired about, I was residing and was in Brownsville. Previous to such occupation, and while Brownsville was occupied by the Confederate troops, I was in said city. The said city was occupied by the Confederate troops from a short time after the seces'ion of the State in 1861 until November 3, 1863. Then again from the end of July, 1864, till the close of the war in 1865.

2. To the 2nd cross-interrogatory he answers: I have stated where the said parties had gone in my direct examination. Mrs. Cavazos has resided permanently in Matamoras for many years previous
637 to the said occupations. Charles Stillman left and has never returned. W. G. Hale has never resided in Brownsville. S. A. Belden returned in 1866, some time. I. B. Bigelow, I believe, removed temporarily. I do not know what the intention of Belden was; I suppose his removal was temporary, however. Stillman, Belden, and Bigelow removed for political reasons, I understood. Mrs. Cavazos and Hale's reasons for being away I do not know.

3. To the 3rd cross-interrogatory he answers: I was in Brownsville during both occupations by the Federal troops, as also previous to the first occupation by the Confederates from shortly after secession in 1861 to Nov. 3rd, 1863. During the second occupation by the Confederate troops, I was not there. This second occupation was from the end of July to some time in the spring of 1865.

4. To the 4th cross-interrogatory he answers: There were. They were mostly Union men. I cannot particularize every instance. After the occupation by the Federals, most of the Confederate residents of Brownsville went over there. I cannot state how long each of them remained there, or when they returned to Brownsville.

5. To the 5th cross-interrogatory he answers: I cannot state what the intentions of said citizens were at the time in regard to
638 their property; I know they left the same; after the close of the war, most of them who returned recovered the same.

6. To the 6th cross-interrogatory he answers: There was. Netor Maxan was the receiver. I cannot state what property he seized, or to whom it belonged, nor what disposition was made by him of the same, further than that he did make some seizures, and sold some property. There were among them the property of Jeremiah Galvan, Ed. Downey, and R. J. Lawton.

7. To the 7th cross-interrogatory he answers: During the occupation of Brownsville by the Confederates from secession in 1861 to November 3rd, 1863, Stillman, Belden, and Bigelow were in Brownsville. Hale came here occasionally. Mrs. Cavazos resided in Matamoros. During the second occupation by the Confederates, from July to the close of the war, Stillman and Cavazos were absent from Brownsville; Stillman never returned. Cavazos remained in Matamoros. I do not know about Hale. Belden was not absent from Brownsville then; he left again, upon the final occupation by the Federals in the spring of 1865, and returned about the beginning of 1866. Bigelow was absent during the said second occupation by the Confederate troops; I do not know when he returned.

639 8. To the 8th cross-interrogatory he answers: I know that the times I have stated in my direct and cross-examination when all

of said parties were absent from Brownsville they left their possessions and property; that the same remained in charge of no one. I know nothing of their intentions or to abandonment. I do not know that the receiver ever seized or confiscated any lands or property of any one because of the same being abandoned. The Freedmen's Bureau did take them up as abandoned property and held them as I have stated. I know nothing of the circumstances of the latter seizure of the defendant's property, or of Bigelow's, further that the U. S. Gover'ment used the same while it held it. I do not know what disposition was finally made of said property, further than that some time after the close of the war the gover'ment released the same.

9. To the 9th cross-interrogatory he answers: There was at times great confusion upon the change of forces. The reasons were the political opinions of the parties, except Mrs. Cavazos, who always resided in Matamoros. Stillman, Belden, and Hale were Confederates. Those citizens who were Confederates would remove on the arrival of the Federals, and the Union men on the arrival of the Confederates.

640 10. To the 10th cross-interrogatory he answers: I have answered all I know on this subject in my answers to the 9th, 13th, 14th direct interrogatories. They did not control the said ferry or ferries or any of the lands of the city, because they left them, and no one had charge of them for the said parties.

11. To the 11th cross-interrogatory he answers: I have not stated that there were any enclosures except that around the garrison grounds held by the U. S. Government. I do not know by what authority the same were put up. I have stated what I know on this subject in my answers to the 20th direct interrogatory.

12. To the 12th cross-interrogatory he answers: The said Brownsville Land Company has not made any enclosures on any of said landed portions of the said city. Stillman has a lot or a lot and a half enclosed corner of Levee and 12th street. Belden has a lot or a half a lot on Levee street many years ago which he sold, and also a lot at the foot of 14th and Levee streets, also a lot on Elizabeth street where he resided, and which he deeded away. Stillman had a half block of lots enclosed as a hide-yard, which he sold many years ago.

13. To the 13th cross-interrogatory he answers: There were originally some settlers on that land, and the city made arrangements to have them removed about 1850, and the city appropriated the land

641 at that time for the purpose of a market square and to build a market-house on the same, and has held the same ever since by virtue and under its grant from the State.

14. To the 14th cross-interrogatory he answers: I know of no land in the town tract acquired by said city, except under its charter and grant from the State.

15. To the 15th cross-interrogatory he answers: I know of no further matters at issue which may be of benefit or advantage to the defendants.

ALEXANDER WERBISKI.

UNITED STATES OF AMERICA,
Eastern District of Texas:

I, H. A. Maltby, a commissioner of the circuit court of the United States for the said eastern district of Texas to take affidavits and bail, duly qualified, do hereby certify that the foregoing answers of Alexander Werbiski, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

Given under my hand and official seal this 19th day of June, A. D. 1875, at office, Brownsville, Texas.

[SEAL.] H. A. MALTBY,
Commissioner.

Commissioner's fees $6.08 paid by plaintiff.

H. A. MALTBY,
Commissioner.

642 *Deposition of James G. Browne.—Answers to direct int'g's.*

Suit pending in the circuit court of the United States for the eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } No. 202.

Answers and deposition of James G. Browne, who resides in Cameron County, State of Texas, to the accompanying interrogatories propounded to him in the above-entitled cause, taken by H. A. Maltby, commissioner of the said circuit court to take affidavits and bail, in accordance with the agreements of counsel for the respective parties in the said cause.

The said witness, James G. Browne, having been by me, the said commissioner, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in answer to the said direct and cross-interrogatories, and being carefully examined by me, the said commissioner, did depose and testify, as follows:

1. To the 1st interrogatory he answers: James G. Browne; 53 years of age; have lived in Brownsville since 1847.

2. To the 2nd interrogatory he answers: I know the defendants Maria J. Cavazos, C. Stillman, and Wm. G. Hale. I know Stillman since 1848. Cannot say when I knew Madame Cavazos first, but many years ago, and Mr. Hale since about 1850 or 1851. I knew Samuel A.
643 Belden, deceased, and Israel B. Bigelow, deceased. Belden died about 1871, and Bigelow died in the year 1869. I had known Bigelow since 1848, and Belden since about the same time.

3. To the 3rd cross-interrogatory he answers: The evacuation enquired about took place in November 3rd, 1863.

4. To the 4th interrogatory he answers: The occupation of Brownsville under General Banks took place on the 6th of November, 1863.

5. To the 5th interrogatory he answers: The evacuation enquired about took place during the latter part of July, 1864.

6. To the 6th interrogatory he answers: During the occupation enquired about I was in Brownsville.

7. To the 7th interrogatory he answers: The said Stillman, during the occupation enquired about, was in Brownsville about a week, when he went to Matamoros, Mexico, where he remained the balance of said period. Belden was in Matamoras; Mrs. Cavazos always has lived in Matamoros; Mr. Hale was not in Brownsville, and understood to have been in the interior of Texas; Mr. Bigelow for a few of the first days of the time enquired about was in Matamoros, and then came to Brownsville for the balance of the time.

8. To the 8th interrogatory he answers: During the time en-
645 quired about, the military authorities of the United States had charge of the lands in question. The said military authorities

held the possession of said land during said period. Neither of the said persons nor any one for them had any possession of the said lands during the period enquired about. No private person or persons had or held possession of the said lands during the time enquired about. Many people indeed, and majority of them, left the said city during this time. I have already stated where the said Stillman, Belden, Hale, Cavazos, and Bigelow were during this period. I know that neither of them except as already stated were in Brownsville during said time.

9. To the 9th interrogatory he answers: During the time enquired about, the United States military authorities had charge of the American ferries at Brownsville; these authorities controlled and received the proceeds of the said ferries. Neither of the parties enquired about had any possession or control of said ferries during said period.

10. To the 10th interrogatory he answers: George Dye was the mayor of Brownsville during the period enquired about.

11. To the 11th interrogatory he answers: The United States troops at the time enquired about released military control of Brownsville I think some time in the fall of 1865, when General A. J. Hamilton organized the civil government of the State; cannot state the date: troops continued to be encamped in and around Brownsville until sometime in 1866; cannot state the date.

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12. To the 12th interrogatory he answers: During the period enquired about I was in Brownsville; during this time Mrs. Cavazos was in Matamoros; Stillman was also there; Hale was said to be in the interior of Texas; Belden was in Brownsville; cannot state how much of the time.

13. To the 13th interrogatory he answers: During the time enquired about I cannot say that any one had charge of the claim of defendants to the lands of Brownsville. No one was in possession of any part of said lands except such few of the citizens as were able to get their property out of the hands of the military authorities. Neither of the defendants, nor any one for them, had any possession of said lands during this time. I have already stated in my last preceeding answer where the persons enquired about were during said period, and can state nothing further in regard to their whereabouts during that time.

14. To the 14th interrogatory he answers: The military authorities of the United States had possession of the ferries at Brownsville during the period enquired about; the said military authorities ran and controlled the said ferries and receiveds the proceeds of them, so far as I know. Neither of the said defendants nor said Belden, to best of my recollection, had anything to do with the said ferries during this period.

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15. To the 15th interrogatory he answers: Edward Downey was mayor of Brownsville during the times enquired about,

16. To the 16th interrogatory he answers: I do know the firm or association known as the Brownsville Land Company, though it was more commonly called the Brownsville Town Company. At first was Stillman, Belden and Jacob Mussina, then Basse and Hord, then Basse & Kenedy, then, I believe, Stillman, Belden & Hale, and now latterly Stillman and Hale.

17. To the 17th interrogatory he answers: I do know the lands of the town tract of the City of Brownsville; have known them since 1848.

18. To the 18th interrogatory he answers: I know the lands enquired about. There are no enclosures around said town tract, nor around the lands claimed by the said Land Company, nor by the said Cavazos. The only enclosures on this tract that I know of are individual lots, en-

closed by those who have purchased them and are occupying them. I know of no lot or lots in said city under enclosure held by the
647 said Land Company nor by Madam Cavazos.

19. To the 19th interrogatory, he answers: I do know Levee street and the levee in Brownsville. The parties enquired about have made no exclusive use of said levee nor Levee street. Levee street and the levee has been open and free to the public use since the town was established until now, except that since the late war the Brownsville Levee Company assumed to erect sections of wharves at different points on the Levee front and to collect dues for them. These do not exist now. I do know that the city of Brownsville has held and run ferries across the Rio Grande, in front of said city, under the former corporation, in 1850, until the repeal of the charter; and under the present corporation, I think, for the years 1853 and 1854.

20. To the 20th interrogatory he answers: I know the garrison grounds of Fort Brown, in Brownsville. From 1848 to 1861 the Gover'ment of the United States occupied it as a garrison. From 1861 to November 3rd, 1863, the Confederate troops occupied it. From November 6th, 1863, to the end of July, 1864, the United States Gover'ment troops occupied it as a camping ground. From the end of July, 1864, to say May or June, 1865, no one occupied it. Since the last-named date the United States troops have occupied it. As regards en-
648 closure, it was enclosed under the United States occupation until 1861; between that and the evacuation of Bee, in November, 1863, the back fence rotted down. From the evacuation of Bee to about 1868 or 1869 there was no enclosure around it. At about the last-mentioned date, it was enclosed under the orders of General McCook. Up to the evacuation of General Bee, contained officers' quarters and officers' storehouse and stables; but from that period to about 1867 there were no fabricks on this tract except old Fort Brown. I do not know by what authority or agreement, if any, that the United States troops entered upon the occupation of this garrison.

21. To the 21st interrogatory he answers: I do know the market-square, and market-house, in Brownsville, since it was built, in 1851. Messrs. McDonough and Suzeneau built it for the city on the lands of the city tract. It is on block No. 87 of the city plat, two and half blocks retired from the river. The city authorities of the former corporation established the plaza or square about it. The city collects the rents arising from the said market-house. The city of Brownsville holds and possesses said market-house, and square on which it stands, under its claim & title from the State, and has so held them since the said market-house was built or finished, in 1851.

649 22. To the 22nd interrogatory he answers: I know nothing further of advantage to the plaintiff herein.

Deposition of James G. Brown.—Answers to cross-int'g's.

1. To the 1st cross-interrogatory he answers: I was in Brownsville at the evacuation by the U. States troops in 1864, and had been there during the war up to that time, and during the first occupation by the Confederates. I was most of the time in Matamoros, and trading up the river and at Camargo. The Confederate troops occupied Brownsville from the spring of 1861 to November 3rd, 1863, and from about the first of August, 1864, to May or June, 1865.

2. To the 2nd cross-interrogatory he answers: The parties enquired

about, except Madam Cavazos, when they left Brownsville went to Matamoros, Mexico, temporarily I suppose, though Stillman has never returned. Mrs. Cavazos has always lived in Matamoros. I only know from supposition and hearsay why said parties left Brownsville, not of my own knowledge.

3. To the 3rd cross-interrogatory he answers: I have already stated that I was in the city of Brownsville during the United States occupation in the years 1863 and 1864, and had been there previously since the war begun and during the Confederate occupation, say during the years 1861, 1862, 1863.

650 4. To the 4th cross-interrogatory he answers: There were citizens of Brownsville residing temporarily in Matamoros during the period enquired about. A. Werbiski, George Williman, I. B. Bigelow, J. Galvan, J. B. Thomas, F. J. Fenn, R. Shears, H. Miller, M. Kenedy, J. Walworth, H. Klahn, C. Stillman, and some others whose names I cannot recollect; some of these were in Matamoros during both occupations by the Confederates and some only the second, like myself, who was there principally during the second occupation; they remained away until after the Lee surrender, and returned during the spring of 1865.

5. To the 5th cross interrogatory he answers: The citizens named and referred to in the last preceeding answer left their property; whether they abandoned it or not, might be a matter of legal conclusion. I do not pretend to say.

6. To the 6th cross-interrogatory he answers: There was a Confederate States receiver during the period enquired about, in said city. It was Nestor Maxan; he seized the property of R. J. Lawlor, E. Downey, and J. Galvan; he sold it.

7. To the 7th cross-interrogatory he answers: During the first occupation by the Confederates Stillman and Belden and Bigelow remained in Brownsville. Mrs. Cavazos resided in Matamoros. Hale was in Brownsville temporarily at times. During the second occupation

651 by the same troops Stillman and Bigelow were absent. Mrs. Cavazos was in Matamoros and Belden was in Brownsville, Hale was in the interior of Texas, Stillman has never returned. Bigelow returned at the close of the war and Hale has been here occasionally since the last mentioned time. Mrs. Cavazos still resides in Matamoros.

8. To the 8th cross-interrogatory he answers: They left their property and lands. I have stated that as to abandonment I cannot answer as the point involves legal conclusions. Their lands or property was not seized by the receiver nor confiscated. I have stated that during the occupations by the Federal troops the United States Gover'ment took possession of their lands and property, and after the war it was released. These are all the circumstances I know of said seizure.

9. To the 9th cross-interrogatory he answers: When the forces of the two armies took possession alternatively there was great disturbance on the frontier. Generally those who absented themselves from the city during such changes did so for political reasons. Stillman and Belden and Hale were Confederates, and Bigelow was in the beginning a Confederate, and at the end he was a kind of Union man. Mrs. Cavazos was a rental residing abroad.

652 10. To the 10th cross-interrogatory he answers: I have stated, in my answers to the direct interrogatories, that during the occupation of the city by the Federal troops in the late war the United States military authorities controlled the ferry or ferries and lands mentioned from Nov. 6th, 1863, to, say, near the end of July, 1864, and from the summer of 1865 to about the beginning of 1866. These are all the cir-

cumstances I know regarding the same. The reason why the said company did not exercise such control was their having left the property as I have stated.

11. To the 11th cross-interrogatory he answers: I have stated all I know about enclosures in the Brownsville tract in my answers to the 18th and 20th direct interrogatories, to which I refer.

12. To the 12th cross-interrogatory he answers: As I have stated before, they have not made any enclosures. Stillman enclosed a hide-yard consisting of six lots, and sold three of them many years ago. There is a lot and a half occupied by a store on Levee and 12th streets, held by Stillman. Belden many years ago had a lot on Levee street, which he sold; he also improved a lot on Elizabeth on which he resided, but he made a gift of it many years ago. He bought a lot corner of 14th and Levee streets, which is enclosed.

653 13. To the 13th cross-interrogatory he answers: The land enquired of was acquired by the city by its grant from the State under its charters in the year 1850 or 1853; the city appropriated it to the purposes of a public market and square.

14. To the 14th cross-interrogatory he answers: I know of no lands acquired by the city otherwise than under her charters which grants her the town tract or ejidos of Matamoros on this side of the Rio Grande.

15. To the 15th cross interrogatory he answers: I know of no other matter, nor anything which may be of further advantage to the defendants.

JAMES G. BROWNE.

UNITED STATES OF AMERICA.
Eastern District of Texas:

I, H. A. Maltby, a commissioner of the circuit court of the United States for the said eastern district of Texas, to take affidavits and bail, duly qualified, do hereby certify that the foregoing answers of James G. Browne, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

Given under my hand and official seal this 19th day of June, A. D. 1875, at office in Brownsville, Texas.

[SEAL.] H. A. MALTBY,
Commissioner.

Commissioner's fees $5.62. P'd by plaintiff.

H. A. MALTBY,
Commissioner.

654 *Deposition of John Castaing.—Answers to direct int'g's.*

Suit pending in the circuit court of the United States for the eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } No. 202.

Answers and deposition of John Castaing, who resides in Cameron County, State of Texas, to the accompanying interrogatories propounded to him in the above-entitled cause, taken by H. A. Maltby, commissioner of the said circuit court to take affidavits and bail, in accordance with the agreements of counsel for the respective parties in the said cause.

The said witness, John Castaing, having been by me, the said com-

missioner, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in answer to the said direct and cross interrogatories, and being carefully examined by me, the said commissioner, did depose and testify as follows:

1. To the 1st interrogatory he answers: My name is John Castaing; age, 66 years; I have lived in Brownsville and vicinity since 1847. Since 1849 I have resided continuously in Brownsville, with the exception of a trip to Europe in 1868, during which I was absent four months.

2. To the 2nd cross-interrogatory he answers: I know Mrs. Maria Josefa Cavazos very slightly. I know Charles Stillman and
655 William G. Hale. I have known Mrs. Cavazos for many years, Stillman since 1849, and Hale about since 1850. I knew Samuel A. Belden and I. B. Bigelow, both deceased. I knew Belden since 1849 and Bigelow since 1847; Belden died about 1871 and Bigelow in 1869.

3. To the 3rd interrogatory, he answers: In November 3rd, 1863.

4. To the 4th interrogatory, he answers: Three days after the evacuation just spoken of.

5. To the 5th interrogatory, he answers: About the middle of 1864.

6. To the 6th interrogatory, he answers: I remained continuously in Brownsville during the whole of the late civil war.

7. To the 7th interrogatory, he answers: Mrs. Cavazos was in Matamoros, Stillman also in Matamoros, Hale was not in Brownsville, and Belden was in Matamoros, and Bigelow also. Neither of them was in Brownsville or on the Brownsville lands; Stillman, however, came over once, but was expelled. He only remained a few days.

8. To the 8th interrogatory, he answers: The United States military authorities had charge of said lands. The possession was held by the United States through the provost-marshal. Neither of said defendants had or held possession of said lands during the time enquired
656 about. No private person or persons had or held such possession during that time. A large number of people had left the city during said occupation. I have stated what I know of the whereabouts of the persons named at said time. I do not know where Hale was then. He was not in Brownsville. With the exception of Stillman's being in Brownsville a few days during that time, neither of said persons was in Brownsville or on its lands during said occupation.

9. To the 9th interrogatory, he answers: The United States military authorities. The provost-marshal ran and controlled the ferry and received the proceeds. Neither of said defendants nor Belden nor any one for them had charge or control of the ferry.

10. To the 10th interrogatory, he answers: At the beginning of the occupation Geo. Dye was major, but all civil authority was superseded finally.

11. To the 11th interrogatory, he answers: It took place about May or June, 1865.

12. To the 12th interrogatory he answers: I was in Brownsville during the time enquired about. They were all absent from Brownsville. I cannot state particularly where they all were. I understand Stillman went to New York; Mrs. Cavazos was in Matamoras, and Belden also. Hale was said to be in the interior of Texas. Neither of them
657 was in Brownsville during said period. Belden came back about the beginning of 1866.

13. To the 13th interrogatory he answers: I do; it was the Freedman's Bureau who had such charge. Neither of the defendants nor any one for them had possession of said lands during said time. No private

person had charge of said lands at that time. I have stated in the next preceding answers all I know of the whereabouts of said persons during said time, and also with respect to their not being in Brownsville or on its lands during the said period.

14. To the 14th interrogatory he answers: The United States military authorities had charge and possession of said ferry during the time mentioned. They ran and controlled the said ferry and received the proceeds. Neither of the defendants nor Belden, nor any one for them, had charge, possession or control over the said ferry during that period of time.

15. To the 15th interrogatory he answers: Josiah Moorhead, I think.

16. To the 16th interrogatory he answers: I do know the firm known as the Brownsville Land Company. At first it was composed of Stillman, Belden, and Mussina, then Basse & Hord, then Hord and Kenedy, then Stillman and Belden, then Stillman, Belden and
658 Hale, and now Stillman and Hale.

17. To the 17th interrogatory he answers: I am so acquainted. I have known said lands since about 1848.

18. To the 18th interrogatory he answers: I do know the land to which the defendants set up a claim. There is no enclosure around the said town tract, or around the land claimed by said land company or said Cavazos. Neither the said land company nor the said Cavazos hold any lot or lots in the city of Brownsville under enclosure.

19. To the 19th interrogatory he answers: I do know Levee street or the levee in Brownsville since it was laid out. Neither the said land company nor the said Cavazos have at any time had any exclusive use of said Levee street or levee. It has always been a public thoroughfare, used as such by all persons, and it is so now, except that the condition of that part in front of block 58 and 59 makes it somewhat unavailable for general use. The city of Brownsville has had control of the ferry several times in past years, but I cannot particularize dates. I think the last time was about 1854 or 1855.

20. I do know said garrison grounds. From 1848 to 1861 the same were occupied by the United States Government. The Confederate troops from 1861 to Nov. 3rd, 1863. From Nov. 3, 1863, to Nov.
659 6th, 1863, it was occupied by no one. From Nov. 6th, 1863, to the end of July, 1864, the United States troops camped on the same. From the end of July, 1864, to, say, May or June, 1865, the Confederate troops occupied the same as a camping ground, and since then it has been held by the U. S. forces. From 1848 to 1861 there was a good fence all around it, with the river on the front. From 1861 to Nov. 3, 1863, it was still enclosed, but in bad condition. After the last-mentioned date there were no enclosures up to the time Gen'l McCook rebuilt the garrison, about 1867, when fences were put up around it. From 1848 to Nov. 3rd, 1863, there were good and substantial frame houses, used as officers' quarters, soldiers' barracks, storehouses, and hospitals, and stables. When the Confederates evacuated in 1863 the garrison buildings were burnt down. There were none after that till about 1867, when the garrison was rebuilt. I do not know under what authority they entered or occupied the said land if they obtained any.

21. I do know the market square and market-house in Brownsville since 1850. The city of Brownsville built it on its lands. It is about three blocks from the river, and about four blocks from the garrison fence. The city of Brownsville holds and possesses the said
660 market-house and square and the land the same is built on under its claim and title to its town tract granted to it by its charter.

The city of Brownsville has so held and possessed the same from the time the said market-house and square were first established, say from 1850 or 1851.

22. I know nothing further of advantage to the plaintiff herein.

Deposition of John Castaing. Answers to cross-int'g's.

1. To the 1st cross-interrogatory he answers: I was in Brownsville perevious to the Confederate occupation of said city, and I remained in said city of Brownsville during the Confederate occupation of the same. The Confederate occupation of Brownsville was from the spring of 1861 to November 3rd, 1863; and from the end of July, 1864, to May or June, 1865.

2. To the 2nd cross-interrogatory he answers: The parties enquired about were absent from Brownsville during the period mentioned in the second cross-interrogatory, as follows: Stillman and Belden were in Matamoros, Mexico. Madam Cavazos always lived there. Mr. Hale was said to be in the interior of Texas. Bigelow was away a little while at first and then returned. Stillman has never returned to Brownsville. The others excepting Madam Cavazos were away temporarily. Personally, I do not know the reasons for such absence unless it was political.

661 3. To the 3rd cross interrogatory he answers: I continued to reside in said city of Brownsville during the entire period of the war, say from the spring of 1861 to the proclamation of peace by the President in 1866. I lived in said city before and have continued to live here since. I have already stated the Confederate occupation of said city.

4. To the 4th cross-interrogatory he answers: I do know that there were citizens of Brownsville residing temporarily in Matamoras, Mexico, during the occupation of the said city by Confederate troops; I cannot name them all; J. Galvan, Mr. Fenn, Victor Hasslaner, J. Natus, C. Stillman, during the second occupation of said city by the Confederates, also Jules Beauchry during both occupations; Mr. Woodhouse also during the second occupation, and probably others that I now cannot call to mind. I do not remember when they returned; some never did, among them Stillman.

5. To the 5th cross-interrogatory he answers: As to abandonment of property, I do not know; I know they left it, what they did not take with them. The houses and available real property was taken by the U. States military authorities.

6. To the 6th cross-interrogatory he answers: There was a Confederate States receiver in said city, Mr. Nestor Maxan. I do not know

662 what property he seized, nor to whom it might have belonged.

7. To the 7th cross-interrogatory he answers: I have stated the absence from said city of the parties enquired about. Mrs. Cavazos always lived in Matamoras; Stillman, Belden, and Bigelow were present during the first Confederate occupation. Mr. Hale was here occasionally. None of them but Mr. Bigelow were here during the Federal occupation. Excepting Stillman and Mrs. Cavazos they all returned some time after the Lee surrender so called, probably June or July, 1865.

8. To the 8th cross-interrogatory he answers: As I have said, the parties that left the said city during the war left all the property that they did not nor could take with them. For instance, Mr. Bigelow left his brick house, on the evacuation by General Bee, and although he returned within a couple of weeks, yet, before this, the Federals took his house

and used it during their first occupation as a hospital. The Federals also took possession of Mr. Hausslauer' buildings, and generally they took away buildings that served them for staff and other purposes. They also seized and held the ferries of this side, and took the proceeds. I do not know of the action of the Confederate receiver in respect to the matter enquired about. This is all that I can answer to this question.

663 9. To the 9th cross-interrogatory he answers: The country was in a disturbed condition generally, especially at and after the first Federal occupation. Those that left the said city during the period enquired about generally left from political reasons; though such as were merchants made no sacrifice by so doing, as Matamoras was a great commercial resort during this time. This is all I know in regard to this inquiry.

10. To the 10th cross-interrogatory he answers: I have stated that during the Federal occupation of said city, the United States military authorities held the American ferries and controlled the same, first, until they left in July, 1864, and next until peace was established; I cannot state the time. As before said, I know of no other than political reasons why the so-called Brownsville Land Company did not exercise control over said ferry during such time, unless the said city had claimed it, of which I know nothing.

11. To the 11th cross-interrogatory he answers: I know of no enclosures in this town tract made by the so-called Brownsville Land Company. The enclosure I have mentioned was that of Fort Brown, which before the late war was enclosed by the United States military authorities, and was maintained by them. During the war it disappeared; but since the peace it has been re-established by the same authorities.

664 I do not know from where the authority for this was derived.

12. To the 12th cross-interrogatory he answers: I do not know of the so-called Brownsville Land Company having any enclosure on the town tract of Brownsville; I know that Stillman and Belden occupied town lots in their business; Stillman continues to hold his, at the corner of block 58 and Levee street; Belden had a lot and store in the same block where Mr. Galvan now lives; since the war he got a lot at the corner of block 59 and Levee street, and he had a dwelling lot on Elizabeth street; these were all enclosed; I know nothing further in answer to this question.

13. To the 13th cross-interrogatory he answers: The land on which the market in said city is built was acquired by said city from the State by its charter of incorporation, and at that time. At the time the market plaza was established, the lots of that block were all settled in; and in consideration that the city would place the market there, these settlers yielded up a portion of the lots they occupied.

14. To the 14th cross-interrogatory he answers: I know of no other lands acquired by the said city than those I have mentioned, as acquired by it under its charter or charters.

15. To the 15th cross-interrogatory he answers: I know of nothing further in relation to the questions at issue between the parties

665 hereto of benefit or advantage to the defendants.

J. CASTAING.

UNITED STATES OF AMERICA,
Eastern District of Texas:

I, H. A. Maltby, a commissioner of the circuit court of the United States for the said eastern district of Texas, to take affidavits and bail, duly qualified, do hereby certify that the foregoing answers of J. Cas-

taing, the witness before named, were made before me and were sworn to and subscribed before me, by the said witness.

Given under my hand and *and* official seal this 19th day of June, A. D. 1875, at office Brownsville, Texas.

[SEAL.] H. A. MALTBY,
Commissioner.

Commissioner's fees $5.62. Paid by plaintiff.

H. A. MALTBY,
Commissioner.

Statement of facts continued.—Notice to John P. McDonough by trespassees.—Filed June 2, '76.—(P. 40.)

And thereupon plaintiff introduced and read in evidence, duly proven, the following document:

To John P. McDonough, and Adolpho alias Adolphues Senzeneau:

SIRS: Please take notice that you and each of you are hereby cautioned and warned not to trespass or intrude upon any lands
666 situate within the tract of land known as the exidos of Matamoras, in the county of Cameron, in the State of Texas, whereon is situated and is included the city of Brownsville.

And you are particularly warned and cautioned not to enter or trespass upon a certain piece of land in the said county and State known upon the original map of George Lyon, of the city of Brownsville, as block No. 87 (eighty-seven), in said city, bounded by Washington, Adam, Eleventh & Twelfth streets, of said city.

And we further offer and notify you, by way of friendly advise, that as we understand that you have entered into, or are about entering into a certain contract with the mayor and city council of the city of Brownsville aforesaid, for the erection of a market-house, etc., or some other house upon the aforesaid block No. 87 (eighty-seven), or piece of land that in the event this be the case, that we are the owners of all the aforesaid land as well the aforesaid block as well as the land before described and designated; and if you intrude or trespass upon the same or any part thereof, we shall insist upon our damages for the same, and take all legal steps for the coercion thereof.

And we would further inform you, that whatever erections are placed or put upon said block No. 87 (eighty-seven), we shall, as owners of the soil, claim the same, as the soil is ours.

Very respectfully, your ob't serv'ts,

ROBERT H. HORD.
E. BASSE.

667 *Statement of facts continued.*

And plaintiff introduced and read in evidence sections first, fifth, sixth, eighth, and ninth of an act of the legislature of the State of Texas, entitled an "Act to provide for the investigation of land titles in certain counties therein mentioned," approved February 8th, 1850.

And plaintiff also introduced and read in evidence the first, fourth, and fifth sections of an act of the legislature of the State of Texas entitled an "Act to relinquish the right of the State to certain lands therein named," passed February 10, 1852. And plaintiff also introduced and read in evidence, in connection with the said last-mentioned act of said legislature, the following document, duly authenticated & proven:

Statement of facts continued.—Report of James B. Miller and W. H. Bourland, commissioners to investigate land titles west of the Nueces. (*P.* 43.)

Report of James B. Miller and W. H. Bourland, commissioners to investigate land titles west of the Nueces.

(The titles contained in this report are confirmed by the act of 10th February, 1852. See acts 1852, page 63.)

Abstract of claims in Cameron County investigated by the board of land commissioners appointed under an act of the legislature entitled "An act to provide for the investigation of land titles in certain counties therein mentioned," approved February 8th, 1850.

* * * * * * *

No. 9. Antonio Salinas applies for 1 labor of land originally
668 granted to the said Antonio Salinas by the corporate authority of the city of Matamoros. In this case it appears that although a decree or law passed by the Mexican Government, exercising jurisdiction over the country in which Matamoros was situated, prohibited the corporation from granting any lands to be enclosed and cultivated, for the reason, says the decree, that it would deprive the citizens of the town of the use of same for grazing purposes, etc., they granted the said Salinas, as well as many others, the right to enclose and cultivate labors, paying to said corporation an annual tax for such privilege. But so far as our investigations have gone, Matamoros did not intend to alienate the lands. Applicant proves by many witnesses the occupation and cultivation of the lands claimed by his father and himself for a long time, but as we feel confident that they held only as tenants, cannot recommend its confirmation. For evidence, see application No. 9, Cameron County.

* * * * * * *

No. 29. Basse & Hord's application for sixteen labors of land, granted by the same authority as No. 9, in Cameron County, originally as follows, viz: 1 labor to Francisco Fragosa; 1 labor to Rodrigo Ynojosa; 1 labor to Cuofre Rebalcado; 1 do. to Leandro Martinez; 1 do. to Ygnacio Flores; 1 do. to Catarina Vela; 1 do. to Manuel Vela; 1 do.
669 to Manuel Trevino Canales; 1 do. to Manuel Vela; 1 do. to Agapito Vela; 1 do. to Santos Ybarbo; 1 do. to Nazario Garza; 1 do. to Maximo Sierra; 1 do. to Miguel Salinas; 1 do. to John Treaner; 1 do. José Angel Ynojosa. (Decision the same as in No. 9 of Cameron County. For testimony, see application No. 29, Cameron County.)

* * * * * * *

No. 90. Feliciana Goscascochea de Tigerina, for herself and other heirs, Dona Maria de los Angeles, Garcia de Tarnava, Ramon Lafon, and their heirs, Estefana Goscascochea and her heirs, Don Manuel Prieto and his heirs, Don Rafael Garcia Cabazos and his wife, Doña Maria Josefa Cabazos, and their heirs (as also many other heirs whose names are not set forth in applicants' petition), apply separately, as specified in their petitions, for the confirmation of a certain tract of land called "El Potrero," or "El Agostadero del Espiritu Santo," containing fifty-nine and half leagues of land, originally granted to one Don José Salvador de la Garza by the old Spanish government, in the year seventeen hundred and eighty-one (1781). Witnesses prove the

validity of the original grant, the occupation and cultivation of the lands by said original grantee and descendants for the last 60 years, having thereon numerous herds of stock, many tenants, and servants, sufficient to occupy the whole extent of said 59½ leagues of
670 land, and that said original grantee, descendants, and tenants continued so to occupy and hold absolute possession of said tract, never having abandoned it at any time on account of Indian incursions, down to the approach of the U. S. Army in 1846, and that all government dues were regularly paid by the parties interested.

In this case it appears that original survey of said tract of land was inaccurate, and that the lines called for in said survey included within their limits more land than was either specified or contemplated in said original concession. The government did, in said original grant, reserve the right to appropriate any part or portion of said lands for military establishments, erection of new towns, etc., by 'aying to the grantors a just consideration for the land thus appropriated.

In accordance with said reservation contained in said original grant, the citizens of the city of Matamoros petitioned the proper authorities and had conceded them in accordance with said petition 4 leagues of land (the usual quantity), for the use and benefit of the corporation of the said city of Matamoros. In accordance with the testimony taken in this application, it appears that when said 4 leagues of land
671 thus appropriated came to be surveyed, that it included about 2 square leagues of those originally granted to the said Don José Salvador de la Garza, called the "Agostadero del Espiritu Santo."

It also appears that sundry individuals petitioned for and had conceded them by the proper legal authorities of the Mexican Government 3 other distinct and separate tracts of land, called respectively, "San Martin," "Santa Ysabella" alias "Fronton," and "Bueña Vista," all of which were within the limits of the original survey made for the said Don José Salvador de la Garza; and after deducting the quantity of land claimed and contained in the 4 tracts already specified herein there still remained to the said Don José Salvador de la Garza 59 1-2 or more leagues of land called "El Espiritu Santo."

We are therefore of the opinion that in accordance with the laws, customs, and usages of the Spanish and Mexican Governments, that said 4 concessions herein above mentioned should be respected and regarded as good and valid claims irrespective of the claims of the heirs and descendants of the said Don José Salvador de la Garza, and we also recommend that all that portion of the said "Espiritu Santo" grant, not including the said 4 concessions already mentioned, be confirmed to the said original grantee, his heirs and assigns; provided, always,
672 ther' are no more than 59 1-2 leagues of land in said survey.

(Signed) J. B. MILLER,
(Signed) WM. H. BOURLAND.

OFFICE OF COMMISSIONER OF GENERAL LAND OFFICE OF THE STATE OF TEXAS.

I, Jacob Kuechler, commissioner of the general land-office of the State of Texas, hereby certify that the foregoing are true and correct copies of extracts taken from the report of the land commissioners to investigate land titles in certain counties therein named, under the act approved February 8, 1850, now on deposit in this office, as provided in section 4 of an act entitled "An act to relinquish the right of the State to certain lands therein named," approved February 10, 1852.

In testimony whereof I hereunto set my hand and cause the seal of said office to be affixed at Austin, this 21st day of May, A. D. 1873.

[SEAL.] JACOB KUECHLER,
Commissioner Gen. Land-Office.

THE STATE OF TEXAS,
Department of State:

I, James P. Newcomb, secretary of state for the State of Texas, do hereby certify that Jacob Kuechler, who signed the foregoing certificate, was at the time of signing the same, and is now, the com-
673 missioner of the general land-office of the State of Texas; that his signature thereto and the seal of his office are genuine, and that the said attestation is in due form and by the proper officer.

Witness my hand and the seal of the State of Texas, at office in the city of Austin, this 21st day of May, A. D. 1873.

[SEAL.] JAMES P. NEWCOMB,
Secretary of State.

Statement of facts continued.— Petition of Matamoras to government for order of survey. Feb. 12, 1835.—*Filed June* 2, '76. (*P.* 41.)

And the plaintiff also introduced and read in evidence, duly proven and authenticated, the following documents:

A petition from the ayuntamiento of Matamoros and the syndic attorney, 12th of Feb., 1835.

POLITICAL GEFATURY OF THE NORTHERN DEPARTMENT.

EXCELLENT SIR: The illustrious ayuntamiento of this town, in a dispatch (oficio) dated the 11th inst., tells me what follows:

In an extraordinary session of the 9th inst. the syndic attorney (sindico procurador) proposed that, being commissioned to reconnoitre and measure the lots and labors asked for by the citizens, a surveyor be permitted to join him in effecting one and the other, and that a salary be assigned the said surveyor, because experience has shown that
674 bad measurement occasion' confusion in the possession, and, consequently, differences between the possession, and the time not being distant when what one ayuntamiento gives another will take away, as may have already happened; for which it would likewise be good, and it has already been requested by some, that titles of possession be given to those who have received grants in the name of the ayuntamiento, signed by the president and secretary, and charging two dollars for the same.

It was likewise proposed by the president that the festivities of this town will be celebrated from this year, from 25th of April to the 10th of May, that being the best season for strangers to attend, and when the inhabitants have less to do on the whole. It was resolved that the approbation of the government be requested by the next mail, adding that the salary of the surveyor is not to exceed thirty dollars per month.

I send your excellency a copy for your instruction and approbation, leaving to this gefatura the appointment of the surveyor requested in

the inserted communication. On remitting it to your excellency I have the honor of repeating my consideration and particular esteem.

God and liberty.

Matamoros, February 12th, 1835.

FRANCISCO LOJERO.

The his excellency the governor of the State.

DON FRANCISCO VITAL FERNANDEZ,

Ciudad Victoria.

675 (On the margin:) Ciudad Victoria, February 20th, 1835, to the counsel Fernandez Villareñor, 1st officer.

It is a copy from the original which is in the archives of this office, is faithfully corrected, and was taken at the request of Mr. E. Basse, in compliance with the government decree which will be found on the margin of the petition; it is written on two leaves and sealed with seal of this office, the second being signed and the second marked with a flourish by the undersigned 1st officer, acting as secretary.

GEORGE HOPHAM,

1st Officer.

Ordinary session of Saturday, June 5th, 1841. Presidency of Señor Valdez.

In continuation, another petition was read from several citizens, who pray that the town tract (exidos) again be surveyed, to prevent, by some means, the evils they complain of; as also that they be granted one league more than the number designated in each course.

After a light discussion it was resolved that, as soon as possible, the survey of the town tract (exidos) be proceeded with, previously citing the parties interested in the lands that will be included, declaring it inadmissible what they furthermore ask, as this corporation has no power to grant it.

The present session was closed, having been present Messrs.
676 Valdez, Langoria y Serna, Cavazos, Garcia, Treviño, Rodreguez, Susante, Mendez, Gonzales, Parras, and Dinilia; and Messrs. Portella and Sira, having leave of absence, were not present. (Licentiate Francisco Valdez, Juan Longoria y Serna, Juan Cavazos, Justa Garcia, Sebastian Rodreguez, Nicholas Susante, Urbano Mendez, Louis Gonzales, Manuel Porras, Alexandro Dinili.)

MARCUS GALINDO, *Sec't'y.*

CONSTITUTIONAL HALL OF THE CITY
AND PORT OF MATAMOROS.

The government of this department in its official note of May the 22nd, 1835, said to the ayuntamiento of this city as follows:

Yesterday the council said to this government the following:

MOST EXCELLENT SIR: The council reports that, understanding as should be understood the petition of ayuntamiento of Matamoros as refering only to the granting of lands for a town-tract (exidos) and does *and does* not include the foundation (casco) or land on which the town is built, your excellency will please order that the designating of the town-tract (exidos) be proceeded with; that for that purpose your excellency will appoint a commissioner to intervene in all the proceedings that of accord with the ayuntamiento and interested parties, appoint a surveyor to survey the town-tract (exidos) and designate and mark
677 the boundaries; but that, before this, it be found out by the ayuntamiento if there is any private property on these lands, and that

the owner or owners of the same be indemnified according to law; that when the proceeding shall have been finished account of it be given to the superior government to take whatever measures be proper, and that the cost of designating the town-tract (exidos) should be paid out of the municipal found of Matamoros, and if what is on hand be not sufficient, the ayuntamiento provide funds proposing to the government the man'er of obtaining them.

And being of the same opinion, I communicate to your honor so that, citing one of the surveyors who are licensed, you may proceed to the designation of the town-tract (exidos) in the manner expressed, and with the intervention of the syndic procurador of that illustrious corporation who is the person the government considers and commissions on its part to intervene in the proceeding until they shall be terminated, which your honor will send to me.

And this corporation transcribes it to you that, in view of it, you may order its fulfillment, causing the determination and survey of the town-tract (exidos) of this city to be carried into effect in the manner provided by superior orders, for it was so resolved by this illustrious ayuntamiento at the ordinary session of the 5th of the
678 current month, on the petition of several citizens, together with those living adjoining and the parties interested.

God and liberty.

Matamoras, June the 15th, 1841.

FRANCISCO VALDEZ, *President.*
M. GALINDO, *Sec't'y.*

To the third constitutional alca'de Don Juan Langoria y Zerna.

CITY OF MATAMORAS, *June 15th*, 1841.

Let what is disposed by superior authority in the foregoing inserted decree be complied with, observed, and executed, and consequently to proceed to the delineation and survey of the town-tract (exidos) in the manner ordered. Let the parties interested in the lands aforesaid be cited to witness the survey, and say if they are satisfied with the surveyor, Don Guillerno Oaorchates, who will execute it.

I, the citizen, Juan Longoria y Zerna, third constitutional alca'de, thus provided, ordered, and signed it with assisting witnesses, as I certify "ex officio."

JUAN LONGORIA Y SERNA.

MELCHOR FONSECA.

The citations were issued on this day provided in the foregoing act as I certify.

Assisting: LONGORIA Y SERNA.
MELCHOR FONSECA.

679 On the same day, month, and year, on previous due citation, appeared before me Don Marcas Galinda, general agent of Dona Rita Giron, and Don José Maria, of the same sirname, who, as I certify, is well known to me, and having read to him *to* foregoing proceedings, he answered, that he heard it, would acknowledge to have been cited for the execution of the survey of the town-tract (exidos) of this city, and was satisfied with the appointment for surveyor in the person of Don Guillerno de Oaorchaete.

Having signed as I certify.

LONGORIA Y SERNA.
M. GALINDO.

Assisting:
MELCHOR FONSECA.

On the same day, on previous due citation, appeared Don Juan Tigerna, and in person notified him of the foregoing proceedings; and, being informed, said that he hears and acknowledges himself as cited for the execution of said surveys, and is satisfied with the appointment of surveyor and signs, as I certify.

LONGORIA Y SERNA.
JUAN JOSÉ TIGERINA.

Assisting:
MELCHOR FONSECA.

In the said city, on the 21st day of said month and year,
680 appeared on previous due citation, Don Manuel de la Garza Sasa, and in person certify, I made him equal notification; and he, being well informed, said that he hears it and acknowledges himself as having been cited, is satisfied with the appointment of surveyor, and signs, as I certify.

LONGORIA Y SERNA.
MANUEL DE LA GARZA SOZAR.

Assisting:
MELCHOR FONSECA.

In the said city, on the 28th day of the said month and year, I notified the foregoing proceedings to Don Rafael Garcia Henajosa, as tutor of the minors of Don Rafael Cesnoros; and, being informed, said that hears it and acknowledges himself as cited, and is satisfied with the appointment of surveyor and signs, as I certify.

LONGORIA Y LERNA.
RAFAEL GARCIA.

Assisting:
MELCHOR FONSECA.

In the said city, on the 30th day of the said month and year, the foregoing act was notified to Don Macedonio Capsestran, who presented himself as a representative of Don Ventura Garza; and, being informed,
said that he hears it and acknowledges himself as cited, and is sat-
681 isfied with the appointment made of the surveyor and signs it, as I certify.

LONGORIA Y SERNA.
MACEDONIO CAPISTRAN.

Assisting:
MELCHOR FONSECA.

On the same day appeared Don Arcadio Salinas, heir of the estate of the late Don Rafael Cisneros, to whom I made equal notification; and he being informed, said that he hears it and acknowledges himself as cited, and is satisfied with the appointment made of surveyor, signing these presents, as I certify.

LONGORIA Y SERNA.
ARCADIO SATINAS.

Assisting:
MELCHOR FONSECA.

Immediately thereafter Don Juan Longoria y *Serna* was notified of the foregoing act, who represents Dona Ramona de la Garza; and, be-

ing informed, said that he hears it and acknowledges himself as cited, and is satisfied with the appointment of surveyor, which he signs, as I certify.

LONGORIA Y SERNA.
JUAN LONGORIA Y GARZA.

Assisting:
MELCHOR FONSECA.

In continuation, on having been previously cited, Messrs. Don Ynacio Villareal and Don Marcos Garcia, representing their wives, Dona Josefa and Dona Hilaria de la Garza; and, being well informed, severally said that they acknowledged themselves as cited, and are satisfied
682 with the appointment of surveyor, and sign these presents as I certify.

LONGORIA Y SERNA.
YGNACIO VILLAREAL.
MARCOS GARCIA.

Assisting:
MELCHOR FONSECA.

Without intermission appeared in court Don Domingo de la Garza in person, as I certify, notified him, and he being informed said that he hears it, and acknowledges himself as cited, and is satisfied with the appointment of surveyor, which he signed, as I certify.

LONGORIA Y SERNA.
JOSÉ DOMINGO DE LA GARZA.

Assisting:
MELCHOR FONSECA.

Immediately thereafter, on having previously cited him, appeared in court Don Guillermo O. Docharte, a licensed surveyor, and I notified him personally the foregoing appointment and proceedings, which appointment to execute the survey of the lands comprehended in the town tract (exidos) of this city, with the approval of the parties interested, and he being informed of it, said that he accepted, as he did accept, swearing it by God, our Lord, and the sign of the cross, to discharge well and faithfully according to the best of his knowledge, and he signed this with me, and those of my assistance, as I certify.

683 LONGORIA Y SERNA.
GUILLERMO O. DOCHARTE.

Immediately thereafter, having previously cited him, appeared in court the syndic procurador first of this ayuntamiento, Don Manuel de Porras, and as such, to him personally, I made known the foregoing proceedings on 3rd leaf, dated the 15th of last month, and the official note to which it has reference in that part which alludes to him, and being informed he said that, duly satisfied with the appointment of commissioner to intervene in the survey and determination of the lands of this town tract (exidos) of this city, which I have been honored by the superior government of this department, he accepted, and did accept, and would appear for the purpose whenever he might be cited by the judge who may take cognizance of the survey.

This he gave for an answer, signing it with me and those of my assistance, as I certify.

LONGORIA Y SERNA.
MANUEL PORRAS.

MATAMORAS, *July* 21*st*, 1841.

All the notifications having been made as ordered by the proceedings on the 3rd leaf of the 15th of last month, and having to be present at this survey, two competant individuals that with the character of seers (vidores) and reckoners may intervene in the same, Messrs. Don
684 Domingo Hanandez and Leonardo Espinosa were appointed for the purpose, who will be informed of it for their acceptance, swearing to discharge the commission well and faithfully. I, the citizen Juan y Serna, 3rd constitutional alcalde, thus commanded and signed it, those of my assistance, as I certify.

I, LONGONIA Y SERNA.

Immediately hereafter, having previously been cited, appeared Messrs. Don Domingo Hernandez and Don Leonardo Espinaso, and to them in person notified them, as I certify, the foregoing proceedings, and being informed said that they heard it and accepted it, swearing by God, our Lord, and the sign of the holy cross to fulfill well and truly the charge conferred upon them, to the best of their knowledge, having signed this with those of my assistance, as I certify.

LONGORIA Y SERNA.
DOMINGO HERNANDEZ.
LEONARDO ESPINOSA.

MATAMORAS, *July 22nd*, 1841.

As the surveys of the town tract (exidos) of this city are to commence on to-morrow, let the owners and those living adjoining be cited, by means of a ticket, to appear at the place where it will commence. I, the citizen, Juan Longoria y Serna, thus commanded, signed it with those of my assistance, as I certify.

LONGORIA Y SERNA.

On the same day as I ordered and as I certify.

685 LONGORIA Y SERNA.

The citizen José Maria Valdes, sec'ty pro tem. of the illustrious ayuntamiento of this city.

I certify that the documents which are certified to are exact and faithful copies from the original in the archives of this illustrious ayuntamiento, to which I refer. It is given by order of his honor, and is written on thirty-seven useful leaves of the fourth seal for the current biennial term.

JOSÉ M'A VALDES,
Sec't'y pro tem.

MATAMORAS, *October 29th*, 1850.

The notary public and of the treasury, who seals and signs below.

I certify the citizen José Maria Valdes, by whom the foregoing certified copy is attested as sec't'y pro tem. of this illustrious ayuntamiento, as he styles himself, which office he fills with superior approbation, the archives of the municipality being under his charge. I likewise certify that his signature thereunto is the same he uses and is in the habit of using, and that to all his acts full faith and credit are here given, both in and out of judicature.

Matamoras, November 8th, 1850.

(Signed) JOAQUIN ARGUELLES,
Notary Public.

Petition, pleadings, judgment of supreme court, &c., in Basse & Hord vs. City of Brownsville.— Filed June 2d, 1876. (P. 42 : p. 42 B; p. 42 C; p. 42 D.)

THE STATE OF TEXAS,
County of Calhoun :

686 At a term of the district court begun and holden at Indianola, within and for the county of Calhoun, on the thirteenth day of December, A. D. eighteen hundred and fifty-eight, before the Hon. Fielding Jones, judge thereof, the following cause came on for trial, viz:

BASSE & HORD
vs.
CITY OF BROWNSVILLE. } No. 594. Filed April 14th, A. D. 1854.

To the Hon. A. W. Arrington, judge of the 12th judicial district in and for the county of Cameron, State of Texas:

The petition of Elisha Basse and Rob't H. Hord, of the said county and State, respectfully represents unto your honor that, there'fore, to wit, on the 1st day of June, A. D. 1853, your petitioners were the legal owners and possessors of a certain tract or parcel of land, with the appurtenances, situated in the said county of Cameron, State of Texas, and which was and is bounded and described as follows, that is to say:

Beginning at the most northern or angle of the fence known as the quartermaster's fence around Fort Brown; thence running due north to a line drawn at right-angles to the termination of another line running five thousand Mexican varas magnetic north from the centre of the main plaza of the city of Matamoras; thence, after reaching said line so drawn as aforesaid, running along said line to a point due north of the place where the line of a survey of Charles Stillman strikes the
687 said Rio Grande, which place is understood to be so situated that the line passes directly through a warehouse built by John Young, in or near the town of Mansfield or the site thereof; thence due south to the point above mentioned; thence, following the meanders of the said Rio Grande down to the point where the western line of said quartermaster's fence strikes the said river, to the place of beginning.

And while your petitioners, aforesaid, were so seized and possessed of said parcel of land, with the appurtenances, to wit, on the day and year aforesaid, the City of Brownsville, situated in the said county of Cameron, acting through its officers, with force and arms broke and entered the close of your petitioners, to wit, the said parcel of land, and ousted and ejected your petitioners therefrom, and have taken possession of said parcel of land and have ever since continued in such wrongful possession, taking and receiving the fruits and profits of said land to the value of twenty thousand dollars by the year, and other wrongs then and there committed and did against the peace of the said State of Texas, and to the damage of your petitioners ninety thousand .

Wherefore your petitioners pray your honor to cause the said city of Brownsville to be cited to appear at the next term of this court, then and there to answer to the premises, and that your petitioners
688 may have judgment for their damages aforesaid, mesne profits, and costs of suit, and may recover possession of the said parcel of land.

BASSE & HORD,
For Themselves.

This suit is brought as well to try title as for damages.

BASSE & HORD.

Answer.—Filed May 12th, 1855.

District court, Cameron County.

BASSE & HORD
vs.
CITY OF BROWNSVILLE.

Now comes the def't in this suit, the city of Brownsville, appearing by its attorney in this behalf, and for answer to the said plaintiffs' petition herein, says that it is not guilty of the said several trespasses in the said plaintiffs' petition mentioned and set forth, in manner & form as the same are therein stated, nor any nor either of them, and denies all and singular the allegations of the said plaintiffs in the said petition contained, and of this the said defendant puts itself upon the country, & the said plaintiffs *or* the like.

Wherefore the said defendant prays to be dismissed, with its reasonable costs and charges in this behalf sustained.

S. POWERS,
Att'y for the Def't herein.

Transcript from Nueces County.—Filed July 1st, 1857.

689 Transcript of all the entries in this cause made in the district court of Nueces County. Fall term, Sept. 25th, 1855.

Continued as per agreement on file. Spring term, March 19th, 1856.

Defendant has leave to amend. Spring term, June 2nd, 1857.

Continued by consent of parties. Spring term, March 27th, 1856.

This day came the parties who had previously appeared by their attorneys, and the judge of this court having stated that he was disqualified by law from trying or sitting in this cause from having been of counsel, and the parties having failed to appoint a proper person to try this cause, thereupon the motion of the plaintiff for a change of venue came on to be heard, and was argued by counsel, and upon a consideration thereof it is now ordered by the court that the venue of this cause be changed to the county of Calhoun, in the tenth judicial district, neither party objecting to that county; and it is further ordered that the clerk of this court do forthwith make out a complete transcript of all the proceedings in this cause, and transmit the same, together with his bill of costs, and all the original papers herein, to the clerk of the district court of said county of Calhoun.

Amended answer.

BASSE & HORD
vs.
CITY OF BROWNSVILLE.

690 And now comes the defendant herein, and amending its answer heretofore filed in this cause, and for further answer, by leave of the court first had and obtained, said defendant says actio non, because

it says that for two years or more after the passage of the act of the late republic of Texas, entitled an act of limitations, approved February 15th, 1841, and more than ten years next after the 17th day of March, 1841, and for ten years before the commencement of this action, it, and those under whom it claims, had and held adverse, peaceable, continuous, & uninterrupted possession of land in question, being the same of which it was seized & possessed at the time of the commencement of this action, by metes and bounds, within the boundary of the lands mentioned and described in the plaintiffs' petition; and that neither the plaintiffs nor any one of them, or in their behalf, made entry in and upon said lands, or any part thereof, within ten years next after their right of entry accrued by virtue of the possession by this defendant as aforesaid; and this it is ready to verify. Therefore it prays judgment, &c.

And for further answer, by leave of the court first had and obtained as aforesaid, said defendant says actio non, because it says that it, and those under whom it claims, had and held adverse, peaceable, continuous, and uninterrupted possession of the land in question, because the same of which it was seized and possessed at the time of the
691 commencement of this action by metes and bounds within the boundary of the land and premises in the plaintiffs' petition described for three years and more next before the commencement of the plaintiffs' action herein under title; and that said pl'ffs did not bring their action within three years next after the accrual of their cause of action against the defendant, and this it is ready to verify. Wherefore it prays judgment.

And for further answer, by leave of the court first had and obtained as aforesaid, said defendant says actio non, because it says that the plaintiffs' cause of action accrued to them and against the defendant who claims under title more than three years next before the commencement of their action; and this it is ready to verify. Wherefore it p'ays judgment, &c.

And for further answer, by leave of the court first had and obtained as aforesaid, said defendant says actio non, because it says that it, and those under whom it claims, had and held adverse, continuous, peaceable, and uninterrupted possession of the land in question, being the same of which it was seized and possessed at the time of the commencement of this action, by metes and bounds, within the boundary of the lands and premises in the plaintiffs' petition described, for three years and more next before the commencement of the plaintiffs' action herein, under color of title; and that said plaintiffs did not commence their action within three *three* years next after the accrual of their cause of action against the defendant; and this it is ready to verify. Wherefore it prays judgment, &c.

692 And for further answer, by leave of the court first had and obtained as aforesaid, said defendant says actio non, because it says that the plaintiffs' cause of action accrued to them and against this defendant, who claims under color of title, more than three years next before the commencement of said plaintiffs' action herein, & this it is ready to verify. Wherefore it prays judgment, &c.

And for further answer, by leave of the court first had and obtained as aforesaid, said defendant says actio non, because it says that the plaintiffs' cause of action accrued to them and against this defendant, who claims under color of title, more than three years next before the commencement of said plaintiffs' action therein, and this it is ready to verify. Wherefore it prays judgment, &c.

And for further answer, by leave of the court first had and obtained

as aforesaid, said defendant says actio non, because it says that it had and held continuous adverse possession of the land in question, being that of which it was seized and possessed at the time of the commencement of the plaintiffs' action, by metes and bounds, and within the limits of the land & premises in the plaintiffs' petition described, under and by virtue of a just title, in good faith, for two years and more before the commencement of the plaintiffs' action herein, and this it is ready to verify. Wherefore it prays judgment, &c.

693 And now comes the said defendant into open court and suggests here to the court that it and those estate it has in the lands and tenements sued for, had adverse possession of the same, in good faith, at least one year next before the commencement of this suit, and that it, and those whose estate it has, have made permanent and valuable improvements on the said lands and tenements sued for during the time of such adverse possession, in good faith, and that the said permanent and valuable improvements are worth the sum of fifty thousand dollars.

S. POWERS,
Att'y for Def't.

And in the supreme court of Texas, at Galveston, on the 16th day of January, A. D. 1867, no counsel appearing for the defendants in error, this cause is continued, on the application of plaintiffs in error, until the next annual term of this court.

And in the same court, at Galveston, on the 28th day of January, A. D. 1867, by agreement of the parties, the continuance heretofore entered in this cause is set aside, and the cause is passed to the foot of the docket of the first and third districts.

And in the same court, at Galveston, on the 11th day of February, A. D. 1867, this cause being called, was submitted by both parties on argument and briefs.

And in the same court, at Galveston, on the 21st day of January, A. D. 1868, on motion it was ordered that this cause be continued by the court by consent of both parties.

694 And in the same court, at Austin, on the 11th day of April, A. D. 1871. On this day comes the appellant, by counsel, and after argument at bar, submits this cause with briefs.

And in the same court, at Austin, on the 12th day of February, A. D. 1872, this cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this court that there was error in the judgment of the court below, it is considered, adjudged, and ordered that the judgment of the court below be reversed, and *and* the cause remanded for further proceedings in accordance with the opinion of this court, and the def'ts in error pay all costs in this behalf expended, and this decision be certified below for observance.

And in the same court, on the 30th day of March, 1872. On this day came on to be heard the application for a rehearing in this cause, and, the same being considered, it is ordered by the court that the judgment entered in this cause on the 12th day of February, 1872, be set aside,

and that a rehearing be granted. It is further ordered that the mandate issued on said judgment be returned to the clerk *to the clerk* of this court, and that the same be vacated, cancelled, and annulled, and this decision be certified below for *for* observance.

And in the same court, on the 3rd day of May, A. D. 1872. On this day came the parties, by counsel, and after argument at bar,
695 submit this cause with briefs.

And in the same court, on the 7th day of June, A. D. 1872, this cause again came on to be heard on the transcript of the record; and, the same being inspected, because it is the opinion of the court that there was error in the judgment, it is considered, adjudged, and ordered that the judgment of the court below be reversed, and the cause remanded for further proceedings in accordance with the opinion of this court, and defendants in error pay all the costs in this behalf expended, and this decision be certified below for observance.

And in this same court, on the 19th day of June, A. D. 1872, the plaintiff in error, by counsel, filed the following motion to reform the judgment of the court, viz:

Motion of plaintiff in error to reform the judgment of this court.

THE CITY OF BROWNSVILLE
vs.
BASSE & HORD, DEF'TS IN ERROR. } No. 18.

The City of Brownsville, the plaintiff in error in the above-entitled suit, by its counsel, moves the court to order that the judgment of this hon. court therein be reformed so as to make it conformable to what is decided in the opinion of the court, by stricking out the words "and remanded to be proceeded with in accordance with this opinion," and inserting for the same the words and "dismissed."

And in support of this motion the plaintiff in error refers to the record of said suit, by inspection of which it appears that this motion
696 should be granted for the following among other apparent causes:

1. Said opinion shows that the title to the land in controversy is not in defendants in error, but, on the contrary, is in plaintiff in error; as nothing remains to be decided in the court below save what might be passed upon in a second suit instituted in the proper county, & not in Calhoun County.

2. No other judgment than one of reversal and dismissal is the appropriate legal consequence of the opinion of the court.

3. The plaintiff in error ought not to be subjected to protracted litigation in Calhoun County in a suit where everything in issue is res judicata.

POWERS & MAXAN & WM. ALEXANDER,
Att'ys for Pl'ff in Error.

And in the same court, on the 27th day of June, A. D. 1872. On this day came on to be heard the motion of appellant to amend the judgment entered in this cause on the 17th day of June, which judgment, on rehearing, reversed and remanded the cause; and the same being considered, it is ordered by the court the said judgment be amended to read as follows:

"This cause came on to be heard on the transcript of the record; and being inspected, because it is the opinion of this court that there was error in the judgment, it is considered, adjudged, and ordered that the judgment of the court below be reversed and the cause dismissed, and the appellees pay all costs in this behalf expended, and this decision be certified below for observance."

697 *Statement of facts continued.—Testimony of Stephen Powers for pl'ff.*

And plaintiff also proved by Stephen Powers, duly sworn, that the city did use and run the ferries at Brownsville during the period for which it had licenses therefor from the county court of Cameron county. Said licenses have already been introduced and read in evidence by plaintiff. Maria Josefa Cavazos has never had any actual possession in the ejidos since the Mexican war, in 1846; she has always lived in Matamoros. John Treanor, as her son-in-law and agent, has collected a few rents since 1866. As to the manner in which the city of Brownsville obtained possession of its market square, there were a few settlers on the place, and they were desirous to have the market established there. They all held adversely to Basse & Hord. The city made an amicable arrangement, by which the settlers removed their improvements from the ends of the lots they occupied fifty feet, and the city entered under its title and occupied the ends of said lots and the alley dividing the block on which the market square is established. The middle of the market building is exactly in the middle of said alley.

And no further evidence was adduced in this case.

And upon the foregoing evidence the court, to whom the case was submitted by written waiver of a jury by the parties, made the following rulings and findings; to all of which rulings and findings the plaintiff in open court did then and there except, to wit:

Circuit court of the United States, eastern district of Texas.

698

CITY OF BROWNSVILLE *v.* MARIA JOSEFA CAVAZOS, CHARLES STILLMAN, William G. Hale, and John Tranor (the said Stilman & Hale having deceased, and their heirs being substituted).	On trespass to try title.

On trial before Justice Bradley and Judge Morrill, commencing May 30th, 1876, and ending June 5th, 1876.

Maxan, Powers, & Waul for plaintiff; James R. Cox, Jack & Ballinger for defendants.

Opinions, findings, and judgment of the court, a jury being waived by stipulation in writing filed.

The property in question is within the boundary lines of a tract of fifty-nine and one-half leagues, called the Espiritu Santo tracts, granted by the Spanish Government to one de la Garza in 1871, which grant was recognized by the legislature of the State of Texas by the "Act to relinquish the right of the State to certain lands therein named," approved February 10th, 1852. It is conceded by both parties that for several years prior and up to the year 1826 one Doña Maria Francisca Cavazos was seized of the Espiritu Santo tract (including the lands in dispute)

by regular deraignment of title under said grant. Madam Cava-
699 zos died in 1835, and devised the Espiritu Santo tract to three parties, one of whom was Doña Maria Josefa Cavazos, who by an act of partition between the parties became seized of that portion of the tract on which the premises in dispute are situated. A portion of these premises she subsequently conveyed to other persons under whom the other defendants claim by regular deraignment of title. So that the defendants have shown title to the land in dispute for the several parts which they respectively claim, unless the plaintiff can show a better title. This the plaintiff, the city of Brownsville, attempts to do.

The title set up by the city is a title by a proceeding for expropriation, by which, as they allege, the premises in dispute were expropriated as part of the ejidos (or town lands) of the city of Metamoros in 1826 and 1827.

To explain the nature of this claim it is necessary to advert to the fact that by the Spanish laws which were in operation in Mexico every corporate town became, by virtue of the act of incorporation, entitled to lay out and appropriate for the public use of the town, for streets, squares, building sites, and small holdings or labors for the people, a town tract of four square leagues, to be two leagues square when admissible.

Mexico separated from Spain about the year 1821, and the several States adopted constitutions of government, retaining, however, the Spanish laws as far as they were applicable to their new circumstances. Amongst the rest the State of Tamaulipas, which com-
700 prised the territory on both sides of the Rio Grande, adopted a constitution in 1825, by the XIIIth article of which it was declared as follows: "Neither the congress nor any other authority shall be able to take the property, even that of the least importance, of any private individual. When it shall become necessary, for an object of a common recognized utility, to take the property of any person, he shall first be compensated, upon the examination of arbiters appointed by the government of the State and the interested party." This was also substantially the old Spanish law.

On the 28th of January, 1826, the congress of Tamaulipas constituted Matamoras (before called Refugio), a town, with p'wer to take the necessary proceedings to ascertain the title to the land on which it was established, causing indemnification to be made agreeably to law, if it should belong to an individual.

The town council in due time proceeded to take measures to lay out the ejidos. They caused the land-owners to be notified and a survey to be made in August, 1826.

This survey took for its central point the centre of the public square in Matamoras, and the ejidos was made to embrace a tract two leagues square, extending one league north, one league south, one league east, and one league west of this point. It was thus made to extend across the Rio Grande, and to include about a league and a half of the land of Madam Cavazos, which league and a half is the present site of
701 the city of Brownsville, and is the property in dispute. The survey having been made, the next thing to be done to condemn the land for the ejidos, or town lands, was to make the required indemnification to the owner, before which was done, according to the constitution, the property could not be taken by the city.

But here a difficulty occurred. The indemnification must be made upon the examination of arbiters appointed by the government of the State and the interested party. But Madam Cavazos refused to co-op-

erate in the matter. She opposed the whole proceeding. It took from her her best land along the river front, and even took the farm which she had under her private cultivation. Various efforts were made to compose the difficulty, but in vain.

At last the State congress, on the 15th of October, 1827, made a decree to the following effect:

"The government, in its use of the powers, will see that the civil authorities of Matamoras compel Doña Rita Giron (another contestant) and Doña Francisca Cavazos to obey the constitution and the laws. If, being notified the second and third time, those ladies refuse to appoint arbiters for the corresponding indemnification of the lands which are to be taken for ejidos, the ayuntamiento will proceed to their occupation and survey without citing them further. Should the parties or their heirs hereafter ask for the indemnification of their lands, and be willing to name an arbiter as required in the 13th article of the constitu-
702 tion of this State, a new measurement shall be made, if they desire it, and the land they asked for before shall be given them as a recompense. This resolution shall be communicated to the government, in order that, acting in accordance with it in the present case, it may serve as a general rule in all others that may occur, until a basis to be observed may be established by law."

The effect of this decree is much controverted by the parties. The plaintiffs insist that it was an adjudication in rem for the expropriation of the lands without compensation to the owners, if they continued recalcitrant, reserving to them, however, a right to obtain compensation at any future time by applying therefor. The defendants insist that it merely authorized a user of the lands without expropriation until the parties chose to accept the terms proposed by the government.

The validity of this decree we are not at liberty to question. It was an act of the highest tribunal known to the laws of Tamaulipas—a tribunal invested with supreme judicial as well as legislative authority. It does not belong to us to say that its acts or decrees were unconstitutional. So far as we are concerned, it was sole judge of its powers, and its acts must be accepted by us as having undoubted validity. The true construction and effect of the decree are alone to be sought by us. To arrive at these, we are authorized to look at all the circumstances
703 of the case, the conduct of the parties, the government's own views on the subject, and any other light within our reach.

The most obvious view of the question as it first presented itself to my own mind was this, that as the land-owner refused to avail herself of the privilege accorded to her by the constitution, the legislature could authorize the taking of the land without compliance with the condition of first making compensation, and that this was what the legislature did; that the taking which ensued was followed by all the incidental rights and transfer of title which accompany a taking in any case; in other words, that the expropriation was complete, but the party had a reserved right to claim indemnification whenever she chose to ask for it and comply with the constitutional requisition. The district judge took a different view, and held that the occupation authorized by the decree was a mere usufructuary one, liable to be terminated in case of failure to make due compensation when it should be asked for, and not ripening into title until such compensation should be made.

The language of the decree, compared with that of the constitution, lends force to this view. The word used in the constitution is property (propiedad); the word used in the decree is occupation (ocupacion). These words seem to have about the same distinction in the Spanish

law as in the English. One indicates title, the other mere pos-
704 session and use. Occupation is possession; it confers title where no owner existed before, or where the former owner had abandoned the thing occupied; but where an ownership or dominion already exists it amounts only to possession and use.

The city authorities of Matamoras proceeded to treat the land as ejidos, granting a large number of labors or town-holdings in it, but the question of indemnity would not be laid. It was agitated until the death of Madam Cavazos in 1835, and afterwards until the United States took possession of the country in 1848, up to which period the State of Tamaulipas continued to exercise de facto jurisdiction over the country.

In 1831 the matter was brought to the attention of the general government again, which, on the 29th of June, in that year, made an order that the ayuntamiento of Matamoras should give information respecting the state of the affairs of the ejidos, and directing the first alcalde to order the owners of the land to present themselves at the capital (Victoria), in person or through an agent, within a reasonable time, to be named, so that, hearing the attorney-general of finance, the indemnification to all might be agreed upon. In 1834 this order was served by the city authorities on the owners a second time, notifying them that this would be the last notice; and if they did not appear they
705 would suffer the damages of the law for interposing obstacles in so important an affair. All this seems to indicate, on the part of the city, a conviction that its title was not entirely beyond dispute and needed further support, and on the part of the government a like view of the case.

The answer of Madam Cavazos to this summons is given in evidence. She was told to appear before the supreme government, and present the titles of the property, in order that the dimensions of the ejidos lands which affected her might be determined. She declined to go or send, giving as an excuse that she was to' old; but said, in substance, that she would receive her indemnification in money, and would submit to whatever the government might order. This is her last appearance on the scene. No evidence is given to show that any money was ever paid, or that any mode of estimating the amount due, different from that required by the constitution, was ever devised by the government. The defendants show some supplementary proceedings, taken in 1841, for a resurvey of the ejidos, in which the Cavazos family were represented, and, it seems, acquiesced. But the survey was not satisfactory to the town authorities, and they refused to receive it, although they had ordered it.

The defendant offers in evidence, also, certain proceedings which took place before the State congress in September and October, 1848. The nature and objects of these proceedings were not distinctly ex-
706 plained to us during the reading of the evidence, and we held them under advisement. We have since examined them, and find them to be this:

After the treaty of Guadalupe Hidalgo (which was signed May 30, 1848), the Mexican authorities yielded all claim to jurisdiction east of the Rio Grande. Thereupon the city authorities of Matamoras proposed to sell out to private parties, speculators from the United States, the ejidos of the city on the Texas side. John Treanor, one of the now defendants representing the Cavazas family, and particularly Doña Josefa, one of the defendants, applied to the general government for an injunction (or what is equivalent thereto) to prohibit the ayuntamiento

from making any such sale, on the ground that it had no right to do this, and it would injure the owners. The ayuntamiento put in an answer setting up the claim of the city. The matter was presented to the congress, who referred it to a committee, and that committee made an elaborate and able report, in which they take the ground that as compensation had never been made (which they held to be an indispensable requisite), the right of property was never perfected; and that as no expropriation could now be made in consequence of the change of government, the original owners were entitled to receive back their lands, and were not confined to compensation; that alienation of the lands would not be a public use, but private speculation. They say
707 "the right of expropriation has another and more noble origin. Its object is not to increase the receipts of the public revenues, but to provide for the well being of the community." They add that it might also produce complications with the Government of the United States of the North, who would perhaps justly contend that property belonging to a municipal body must be considered as public property. Hence the committee recommended the congress to adopt a resolution to the effect that it being provided by the 13th article of the former constitution, and the 71st article of the present, that in no case can expropriation be made without previous compensation, and this not having been made as to the ejidos situated on the left banks of the Bravo, the ayuntamiento of Matamoras has not acquired a right of property in that portion, and consequently its former owners preserve it. This resolution was adopted by the congress on the 20th of October, 1848.

We reject these proceedings as evidence, because the congress of Tamaulipas had ceased to have any jurisdiction over the land in question. But as an authority on the law of that State, and as bearing upon the construction and effect of the decree of October 15th, 1827, it possesses the highest value. The congress had jurisdiction of the parties before it, and of the subject-matter. The city of Matamoras proposed to make a sale and conveyance which would have
708 greatly injured and embarrassed the owners of the Cavazos title, by casting a cloud upon it, and perhaps inciting litigation. They applied to the supreme government for relief, and that government decided against Matamoras. It is a decision of the legal question on a case properly made, and as such it is worthy of great respect at our hands.

In the light of this decision, and of the other transactions which took place after the decree of October 15th, 1827, we are brought to the conclusion that the decree and the proceedings under it did not have the effect to transfer to the city of Matamoras the title to the lands.

But if we are wrong in this conclusion, there is another point that is fatal to the claim of the plaintiff. As a corporation, the existence of the plaintiff commenced with the act of incorporation passed February 7th, 1853, and it has never received from any source the title of Matamoras, if such title had been outstanding, and hence, not having any title of its own to stand on, it must fail in this action. The only title on which it relies is its charter. But that confers none. It confirms to the citizens of Brownsville, as incorporated by the act, all property, rights in action and claims to property which were held, owned, occupied, and enjoyed by the citizens of said city under the previous
709 charter of 1850, which had been repealed; but it confirms nothing and grants nothing to the corporation of Brownsville. The

first charter did. It relinquished to the corporation all the right, title, and interest of the State in and to the land that was owned by the town of Matamoras on the 19th of December, 1836. But this charter was repealed on the first of March, 1852; and with it the estate, if any was acquired, reverted to the State of Texas. But on the supposition that on the 19th of December, 1836, there was an outstanding estate in the city of Matamoras, in virtue of the expropriation proceedings, that estate, according to the weight of the later authorities, would revert to the original owners of the land, when the purpose of the expropriation became incapable of further accomplishment, or ceased to exist. Expropriation is a seizure of so much of the owners' property as is necessary for the public purpose. A seizure of more by adverse proceedings would be an abuse of the power.

It follows, therefore, that when the purpose is accomplished, or has ceased to exist, the residue of the property belongs to the original owner. But this revertee must be subject to any bona-fide rights that may have lawfully accrued in the mean time. If the citizens of Brownsville, as holders of labors, acquired a right of perpetual occupancy at a certain rent, or any higher degree of title, they could not be deprived of
710 it. And this was probably what was intended to be expressed in the charter of 1853.

The question whether any rights of beneficial ownership, requiring the constitution of a trust for their support, existed in the citizens of Brownsville as a body, by virtue of the charter of 1850, after its repeal was brought before the supreme court of Texas in the case of Basse v. Fontleroy, 11 Texas, 698, and the court held that all lands held by the city for public purposes were liable to be disposed of by the legislature; and that all grants and trusts created by the first charter were extinguished by its repeal. But the individual citizens, as such, might have rights which were valuable, and which ought to be restored to them. This is all that was done by the new charter of 1853.

We are of opinion, therefore, that the State did not convey any property to the present corporation of Brownsville, even if it had any to convey, but we are also of opinion that the State had nothing to convey as derived from the corporation of Matamoras.

The conclusion follows, that the defendants hold the title of the property in dispute under the Garza grant of 1781, duly confirmed by the act of 1852.

The plea of res judicata we do not think can be sustained. It
711 is true that Basse & Hord, the parties under whom the heirs of Stillman and Hale claim, brought suit for the same property now defended for by them against the city of Brownsville in 1854, and a decision was rendered in favor of the city by dismissing the suit on the 27th of June, 1872; and no suit was brought by Basse & Hord, or the defendants, Stillman and Hale, within the year required by the statute of Texas.

But they have a sufficient excuse for not bringing it. The city, within ten days after the termination of that suit, instituted this suit against them for the self-same property. In our judgment, this dispenses with the necessity of the defendants bringing a suit. The reason for it ceases. The object of the statute is, if parties are not *are not* satisfied with the result of one action, to compel them to relitigate the matter without unnecessary delay; and a year is fixed for the purpose. But the defendant in the former suit, the successful party therein, itself commenced the relitigation almost immediately. The object of the statute was answered, and it would be promoting unnecessary & vexatious litigation

to require the present defendants to bring a suit also. And, even if a plea of reconvention were necessary, in order to satisfy the equity of the statute, we think that such a plea has been put in, not full and clear at first, but rendered so by amendment afterwards, which was
712 within the discretion of the court.

As to the pleas of prescription, we think that under the circumstances of this case, the mixed possession that has ever existed, the continued contest of the parties, the pending of litigation from 1854 to the present time, and the absence of actual possession by either party over a great portion of the property, no prescription can be claimed; and the decision of the case must rest on the documentary title.

Our decision is in favor of the defendants as follows:

We find against both parties in fact on the issue of prescription.

And as a matter of law we find for the defendants on the question of title, namely, that the defendants are respectively seized in fee of the respective parts and portions of the lands claimed by the petition for which the respectively defend, and that the plaintiff is not so seized; and as a consequence of this finding we also find the defendants not guilty, as they have severally pleaded, subject, however, to the disclaimer filed by the defendants; the lands and premises disclaimed not being embraced in this judgment.

And we give judgment for the defendants, that they severally recover the said lands in the parts and portions respectively claimed by them in the pleadings in the cause, and that as to the action and de-
713 mand of the plaintiff they go thereof without day and recover their costs.

JOSEPH B. BRADLEY,
Associate Justice Sup. C't U. S.
AMOS MORRILL,
Dist. Judge.

Statement of facts continued.—Agreement of counsel.

The following agreement of counsel appears endorsed on the original statement of facts as signed by the court, to wit:

We agree to the within statement of facts and list of documents to be copied into the records and no others.

POWERS & MAXAN, *Pl'ff.*
BALLIGER, JACK & MOTT,
For Def'ts.

714 *Petition for and allowance of writ of error.—Filed June 10th, 1876.*

U. S. circuit court eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

To the hon. the judges of the circuit court of the United States for the fifth circuit and eastern district of Texas:

The petition of the City of Brownsville, plaintiff in the suit of the City of Brownsville vs. Maria Josefa Cavazos et als., and No. 887 of the common law docket of this honorable court, respectfully shows that in said

suit of the City of Brownsville vs. Maria Josefa Cavazos et als. there is manifest error in the final judgment rendered in said case to the prejudice of plaintiff.

The plaintiff aforesaid, therefore, prays for a writ of error to the Supreme Court of the United States, on giving bond in conformity to law, and that the defendants be cited to answer the same and for general relief.

POWERS & MAXAN,
Att'ys for Pl'ff.

A writ of error is allowed in this case as prayed for, returnable to the Supreme Court of the United States the second Monday in October next, 1876, the petitioner giving bond in the sum of two thousand dollars, with security according law, within sixty days from June 12th, 1876.

AMOS MORRILL,
Dist. Judge.

715 The foregoing petition endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Petition for and allowance of writ of error. Filed June 10th, 1876. C. Dart, clerk.

Order from minutes, vol. 3, 547.

May term, June 12th, 1876.

THE CITY OF BROWNSVILLE
v. } 887.
MARIA JOSEFA CAVAZOS ET AL.

A writ of error is allowed in this case as prayed for, returnable to the Supreme Court of the United States the second Monday in October next, 1876, the petitioner giving bond in the sum of two thousand dollars, with security according to law, within sixty days from June 12th, 1876.

(Signed) AMOS MORRILL,
Dist. Judge.

This done on the 10th June instant, and entered nunc pro tunc.

Writ of error to circuit court.—Filed June 10th, 1876.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the 5th circuit, in and for the eastern district of Texas, greeting:

716 Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The City of Brownsville and Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, Bessie G. Stillman, the two latter being minors represented by their guardian ad litem, James R. Cox, esq., Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale, the six last mamed being minors represented by their guardian ad litem, the said James R. Cox, esq., a manifest error hath happened to the great damage of the said

The City of Brownsville, as by its complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday in October next, 1876, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

717 Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the tenth day of June, of the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.]

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Allowed.

AMOS MORRILL,
Dis't Judge.

The foregoing writ of error endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Writ of error to circuit court. Filed June 10th, 1876. C. Dart, clerk.

Citation in error.—Filed June 12, 1876.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, Bessie G. Stillman, James R. Cox, guardian ad litem of the two last named parties, Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, Richard Bernard Hale, and James R. Cox, the guardian ad litem of of the six last named parties, greeting:

718 You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in October next, 1876, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, wherein the City of Brownsville is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this tenth day of June, A. D. eighteen hundred and seventy-six.

[SEAL.]

AMOS MORRILL,
Dist. Judge.

On this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-six, personally appeared W. R. McFarland, deputy U. S. marshal, before me, the subscriber, C. Dart, clerk of the U. S. circuit court for the eastern district of Texas, and makes oath that he delivered a true copy of the within citation to W. P. Ballinger, one of the

attorneys of record for the defendants herein, Maria Josefa Cavazos et al., in person, at Galveston, on this the 12th day of June, 1876.

[SEAL.] W. R. McFARLAND,
Deputy U. S. Marshal, E. D. T.

719 Sworn to and subscribed the 12th day of June, A. D. 1876.

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

The foregoing citation in error endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos et als. Citation in error. Filed June 12, 1876. C. Dart, cl'k.

Assignment of errors and prayer for reversal by plaintiff.—Filed June 10th, 1876.

U. S. circuit court, eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

And now comes the plaintiff in the above-entitled cause, and assigns the following errors as causes of reversal of the judgment rendered herein by the said circuit court, to wit:

1. The court erred in overruling the demurrer of plaintiff, filed May 29, 1876, to the rejoinder of defendants Stillman's and Hale's heirs filed May 26, 1876, as stated in the plaintiff's first bill of exceptions.

2. The court erred in overruling the surrejoinder of the plaintiff, filed May 29, 1876, to the rejoinder of defendants, Stillman's and Hale's heirs, filed May 26, 1876, and in deciding and ruling that the several pleas in reconvention filed by the former defendants Stillman and Hale, April 8, 1873, were such pleas in reconvention as to maintain an action for the recovery of the lands in question de novo, as stated in plaintiff's

720 second bill of exceptions.

3. The court erred in sustaining the rejoinder of the defendants Stillman's and Hale's heirs, filed May 26, 1876, to the replication of the plaintiff, filed May 25, 1876, pleading a former recovery by the plaintiff of the lands involved herein against the grantors of said defendants who acquired the same pendente lite, the said replication of plaintiff being to the several pleas in reconvention of said defendants, filed April 8, 1873; and in overruling the said plea of former recovery, as stated in plaintiff's third bill of exceptions.

4. The court erred in allowing the defendants leave to amend their amended pleas in reconvention, filed March 10, 1875, as stated in the plaintiff's fourth bill of exceptions.

5. The court erred in overruling the replication of plaintiff, filed May 31, 1876, to the amended and second amended pleas in reconvention of the defendants, Stillman's & Hale's heirs, filed March 10, 1875, and May 31, 1876, as stated in the plaintiff's fifth bill of exceptions.

6. The court erred in overruling the motion of plaintiff to suppress the depositions of F. J. Parker, F. Yturria, Henry Klahn, H. M. Field, and Antonio Yznaga, as appears by the exception reserved by plaintiff in the statement of facts by the court.

7. The court erred in overruling the objections of the plaintiff to the introduction and reading in evidence by the defendant, and in allowing to be read in evidence the petition of John Treanor, for Rafael Garcia

Cavazos to the government of Tamaulipas; the petition of the
721 ayuntamento of Matamoras to the said government; the report of the governor of said State to the congress thereof on the said petitions; the report of the committee of the ayuntamiento and its action communicated to the governor; the order of the said governor calling for the said report of said ayuntamiento; the report of the governor to the congress of said State; the report of the committee of said congress to the same, and the resolution of said congress on the matter involved in said petitions, orders, and reports, all dated from September to October. Objected to for the reasons stated in the statement of facts by the court, and the exception reserved thereon.

8. The court erred in its findings of fact and of law in this cause, as set forth in said statement of facts and the exception reserved therein.

9. The court erred in entering judgment against the plaintiff and for the defendants on their pleas of not guilty and general denial.

10. The court erred in entering judgment against the plaintiff and for the defendants on their pleas in reconvention, adjudging the title to the lands herein involved to be in the said defendants and that they recover the same from this plaintiff with costs.

Wherefore plaintiff prays that the said judgment of the said circuit court be reversed and the same be reformed by this hon. court, and that plaintiff have judgment that it is the owner and seized of the lands involved herein, and for the recovery of the same, against the defendants in this cause, with costs.

POWERS & MAXÁN,
Attorneys for Plaintiff.

722 The foregoing assignment of errors endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Assignment of errors and prayer for reversal by plaintiff. Filed June 10th, 1876. C. Dart, cl'k.

Agreement of counsel as to what clerk shall include in transcript in error.—Filed June 10th, 1876.

Circuit court of the United States, eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

The undersigned, counsel for the respective parties hereto, agree that the clerk of said court shall include in the transcript of the record of the above-entitled cause to be prepared on writ of error to the U. S. Supreme Court only the following papers and none other:

1. The petition and pleadings of the respective parties.
2. The bills of exception of plaintiff.
3. The statement of facts signed by the judges, together with all the evidence noted and stated in it.
4. The orders and entries & final judgment on the minutes of said court in said case.
5. The petition for writ of error & allowance by judge.
6. The original writ and citation in error.
7. The bond in error.
8. The assignment of errors by plaintiff.

POWERS & MAXÁN,
Att'ys for Pl'ff.
BALLINGER, JACK & MOTT,
Att'ys for Def'ts.

723 The foregoing agreement endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Agreement of counsel as to how clerk shall make up transcript in error. Filed June 10th, 1876. C. Dart, cl'k.

Copy writ of error to circuit court.—Filed June 12th, 1876.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the 5th circuit in and for the eastern district of Texas, greeting:

Because in the records and proceeding, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the City of Brownsville and Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, Bessie G. Stillman, the two latter being minors represented by their guardian ad litem James R. Cox, esq., Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale, the six last-named being minors represented by their guardian ad litem the said James R. Cox, esq., a manifest error hath happened, to the great damage of the said The City of Brownsville, as by its complaint appears: We being willing
724 that the error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the second Monday in October next, 1876, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the tenth day of June, of the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Allowed.

AMOS MORRILL.
Dist. Judge.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing to be a true and correct copy of the original writ of error in case No. 887, on the law docket of said court, entitled the City of Brownsville vs. Maria Josefa Cavazos et als., as the same now appears on file in my office.

725 To certify which witness my hand & the seal of said court, at Galveston, this the 10th day of June, A. D. 1876.

[SEAL.] C. DART, *Clerk*,
By GEO. C. RIVES, *Dep'ty.*

The foregoing copy writ of error endorsed as follows: C. L. 887. The

City of Brownsville v. Maria Josefa Cavazos et al. Copy writ of error to circuit court.

Original endorsed: Filed June 10th, 1876. C. Dart, clerk.

This copy deposited in clerk's office for defendant in error June 12th, 1876.

C. DART,
Clerk U. S. Circ't Court E. D. T., G.

Filed June 12th, 1876.

C. DART,
Clerk U. S. Circ't C't E. D. T., G.

Plaintiff's 1st bill of exceptions.—Filed June 23d, 1876.

U. S. circuit court eastern dist. of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

Be it remembered that in the above entitled cause, on the 30th day of May, A. D. 1876, the parties thereto being present in court by their respective counsel, came on to be heard the demurrer of the plaintiff, filed May 29th, 1876, to the rejoinder of the defendants, Stillman & Hale's heirs, filed May 26th, 1876, the court considering the same adjudge the law to be with the said defendants, and gave judgment
726 in this behalf against the plaintiff on the said demurrer, overruling the same; to which ruling of the court the plaintiff then and there, in open court, did except, and prayed the court to allow, sign, and seal this its first bill of exceptions, which is now here accordingly done.

JOSEPH P. BRADLEY. [SEAL.]

The foregoing bill of exceptions endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Plaintiff's 1st bill of exceptions. Signed. Filed June 23d, 1876. C. Dart, clerk.

Plaintiff's 2d bill of exceptions.—Filed June 23d, 1876.

U. S. circuit court, eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

Be it remembered that in the above entitled cause, on the 30th day of May, A. D. 1876, the parties thereto being present in court by their respective counsel, came on to be heard the surrejoinder of plaintiff, filed May 29th, 1876, to the rejoinder of defendants, Stillman's & Hale's heirs, filed May 26th, 1876, and the court considering the same adjudged that the said pleas in reconvention, having been amended by leave of the court in 1875, and being now further amended by like leave, were sufficient for the said defendants, Stillman & Hale's heirs, to have and maintain their action against the said plaintiff for the recovery of the lands involved in said pleas in reconvention, and gave judgment in this
727 behalf against the plaintiff, to which ruling of the court the plaintiff then and there, in open court, did except, and then and there

prayed the court to allow, sign, and seal this its second bill of exceptions, which is now here accordingly done.

[SEAL.] JOSEPH P. BRADLEY.

The foregoing 2nd bill of exceptions endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Plaintiff's 2nd bill of exceptions. Signed. Filed June 23d, 1876. C. Dart, cl'k.

3d bill of exceptions not filed.
Attest:

C. DART, *Clerk.*

Plaintiff's 4th bill of exceptions.—Filed June 23, '76.

U. S. circuit court, eastern district of Texas, at Galveston.

THE CITY OF BROWNSVILLE
vs.
MARIA JOSEFA CAVAZOS ET ALS. } C. L. No. 887.

Be it remembered that in the above-entitled cause on the 31st day of May, A. D. 1876, the parties thereto being present in court by their respective counsel, after the parties had announced themselves ready for trial, and after the plaintiff had read his petition filed July 9th, A. D. 1872, and after the defendants had read their respective answers and pleas in reconvention filed April 8th, 1873, and their amended pleas in reconvention filed March 10th, 1875, and their rejoinder filed May 26th, 1876, and after the court had overruled the demurrer of the plaintiff filed May 29th, 1876, to the rejoinder of the defendants, Stillman & Hale's heirs, filed May 26th, 1876, to the plaintiff's replication filed
728 May 25th, 1876, to the plea in reconvention of said defendants, Stillman & Hale's heirs, filed April 8th, 1873, and after the court had overruled the plaintiff's plea of res adjudicata contained in said plaintiff's replication, filed May 25th, 1876, to the said Stillman & Hale's heirs, said pleas in reconvention filed April 8th, 1873, the said defendants, Stillman's & Hale's heirs, by their counsel, moved the court for leave to amend their said pleas in reconvention filed April 8th, 1873, and March 10th, 1875, which leave the court, after objection thereto by the plaintiff that the said motion to amend came too late, then and there allowed and granted said leave to amend to said defendants, considering that the trial had not been begun, but that only the sufficiency of the pleading had been discussed, to which ruling of the court the plaintiff then and there in open court did except and prayed the court to allow, sign, and seal this its fourth bill of exceptions, which is now here accordingly done.

[SEAL.] JOSEPH P. BRADLEY.

The foregoing 4th bill of exceptions endorsed as follows: C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Plaintiff's 4th bill of exceptions. Signed. Filed June 23, '76. C. Dart, cl'k.

729 *Bill of exceptions No. 4.—Filed June 24th, 1876.*

THE CITY OF BROWNSVILLE
v.
MARIA JOSEFA CAVAZOS ET AL. }

Be it remembered that on the trial of the above cause, and on the

delivery of the opinion & judgment of the court, the plaintiff excepted to so much of the judgment of the court as adjudged "that the decree of October the 15th, 1827, & the proceedings upon which the same was founded & the proceedings under it did not have the effect to transfer to the city of Matamoras the title to the lands in controversy," the plaintiff insisting that by the constitution & laws of the State of Tamaulipas a full & perfect title was vested in said lands in the city of Matamoras by virtue of said decree and the proceedings thereunder, and that all proceedings by private parties or by the city of Matamoras or by the State of Tamaulipas after 1836 and after 1846, when the State of Texas in fact & in law held possession and exercised authority over said land, were absolutely null & void & without authority judicial or persuasive.

And plaintiff further excepted to so much of the opinion & judgment of the court as adjudged "that the corporation, plaintiff, commenced its existence on February 7th, 1853, & has never received from any source the title of Matamoras, and hence not having any title of its own to stand on it must fail in this action." The plaintiff insisting that by the charter of the city of Brownsville by the State of Texas
730 in 1850, granted & relinquished to plaintiff all the right, title, & interest of the State in said lands, and that the grant was confirmed by the charter of 1853.

And the plaintiff also excepted to so much of said opinion and judgment as adjudged "that the repeal of the charter of 1850 in 1852, took with the repeal these lands, and the estate, if any was acquired, reverted to the State of Texas;" the plaintiff insisted that the simple repeal of the charter held the land in abeyance, & when a recharter was had all the original rights conferred by the charter reinvested the estate, subject to the enlarg'ments, diminutions, and qualifications set forth in the charter of 1853.

The plaintiff further excepts to so much of the opinion of the court as adjudged: "The conclusion follows that the *the* defendants hold the title of the property in dispute under the Garza grant of 1781, duly confirmed by the act of 1852." The plaintiff insists that the property had passed from the grantees in the Garza grant by the decree of October 15, 1827, and the pretended confirmatory act was made of only so much of the Garza grant as was outside the lands in controversy; and the plaintiff also excepts to all that portion of the opinion of the court that adjudges that the plea of res adjudicata cannot be sustained, and the plaintiff insists that the statute is peremptory and cannot be avoided, dispensed with, or its force & effect weakened except by the express waiver of plaintiff.

731 And because no action or plea in reconvention for the recovery of the land, or any legal demand for the land was made within a year as expressly required by the statute; and plaintiff further excepts to the judgment of the court upon the plea of limitation to defendants' plea of reconvention, as the same is not sustained by the facts in the case.

And plaintiff further excepts to the judgment, & insist that the facts in evidence & in the record do not sustain said judgment; and the plaintiff prays that this his bill of exceptions made at the time of rendering said judgment be signed, sealed, & made a part of the record in the cause, which is accordingly done.

June 5, 1876.

AMOS MORRILL,
Dist. Judge.

The foregoing bill of exceptions endorsed as follows: C. I. 887. The City of Brownsville v. Maria Josefa Cavazos et al. Bill of exception No. 4. Filed June 24th, 1876. C. Dart, cl'k.

Bond for writ of error.—Filed June 29th, 1876.

Supreme Court of the United States.

THE CITY OF BROWNSVILLE, PLAINTIFF IN error,
vs.
MARIA JOSEFA CAVAZOS ET ALS., DEFENDants in error.

Know all men by these presents that we, the City of Brownsville, as principal, and Nestor Maxan, Stephen Powers, Wm. Nealle, & A. Wirbiski as sureties, are held and firmly bound unto Maria Josefa
732 Cavazos, Elizabeth P. Stillman, Sames Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, and Bessie G. Stillman, Frances E. Hale, Fances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale in the sum of two thousand dollars, to be paid to the said Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, and Bessie G. Stillman, Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale, their executors and administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, the said The City of Brownsville signing and acting by and through it lawful mayor, George Willman, and its lawful secretary, Louis Cowen, and affixing hereunto its corporate seal this twenty first day of June, A D. eighteen hundred and seventy-six.

Whereas the above named The City of Brownsville hath prosecuted a writ of error to reverse the judgment rendered by the circuit court of the United States in and for the fifth circuit in the eastern district of
733 Texas, at Galveston, in a suit wherein the said The City of Brownsville was then and there plaintiff, and the said Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman Clara F. Stillman, Charles Stillman, and Bessie G. Stillman, the two last named being minors and represented by their guardian ad litem James R. Cox, esq., Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale and Richard Bernard Hale, the last named six parties being minors and represented by their guardian ad litem James R. Cox, esq., were defendants, which case was numbered 887 on the common law docket of said circuit court:

Now, therefore, the condition of this obligation is such that if the above named, the city of Brownsville, shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

The words "Frances Josepha Hale" interlined, and the word "after" erased, before signing.

THE CITY OF BROWNSVILLE,
[L. S.] By GEORGE WILLMAM,
Mayor.
STEPHEN POWERS.
NESTOR MAXÁN.
F. SAN ROMAN.

Attest:
[SEAL.] L. COWEN,
City Secretary City of Brownsville, Tx's.

Approved:
AMOS MORRILL,
Dist. Judge.

734 STATE OF TEXAS,
County of Galveston:

On the 10th of June, A. D. 1876, before me came Nestor Maxán and Stephen Powers, known to me to be two of the individuals described in, and who executed the foregoing instrument, and being duly sworn, say that they reside in Brownsville, county of Cameron, in the State of Texas, and that they are worth each of them more than two thousand dollars in real estate in the State of Texas, over and above all their debts and liabilities, and exclusive of property exempt from execution.

NESTOR MAXÁN.
STEPHEN POWERS.

WM. NEALLE.
A. WERBISKY.

Sworn to and subscribed before me this 10th day of June, A. D. 1876.
[SEAL.] C. DART,
Clerk U. S. Circ't Court East'n Dist. of Texas, at Galveston.

The foregoing bond endorsed as follows: C. L. No. 887. The City of Brownsville, pl'ff in error, vs. Maria Josefa Cavazos et als., def'ts in error. Bond for writ of error. Filed June 29th, 1876. C. Dart, clerk.

735 UNITED STATES OF AMERICA,
Eastern District of Texas:

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing seven hundred and thirty-four (734) pages of writing to contain a true copy of the record, and of all proceedings in the cause lately pending in said court, numbered 887 on the law docket of said circuit court, and entitled "The City of Brownsville v. Maria Josefa Cavazos and others," as the same now appears in my office.

To certify which, witness my hand and seal of said court, at Galveston, in said district, on the 12th day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of American Independence the 101st year.

[SEAL] C. DART,
Clerk U. S. Circuit Court East'n Dist. Texas, at Galveston.

736 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the 5th circuit, in and for the eastern district of Texas, greeting:

Because in the records and proceedings, and also in the rendition of the

judgment of a plea which is in the said circuit court, before you, between The City of Brownsville and Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, Bessie G. Stillman—the two latter being minors represented by their guardian ad litem James R. Cox, esq.—Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, and Richard Bernard Hale, the six last named being minors represented by their guardian ad litem, the said James R. Cox, esq., a manifest error hath happened, to the great damage of the said The City of Brownsville, as by its complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday in October next, 1876, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

737 Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the tenth day of June, of the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.]

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Allowed:

AMOS MORRILL,
Dist. Judge.

(Indorsed:) C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos & als. Writ of error to circuit court. Filed June 10th, 1876. C. Dart, clerk.

738 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Maria Josefa Cavazos, Elizabeth P. Stillman, James Stillman, Isabel G. Stillman, Clara F. Stillman, Charles Stillman, Bessie G. Stillman, James R. Cox, guardian ad litem of the two last-named parties, Frances E. Hale, Frances Josepha Hale, William H. Hale, Susan B. Hale, Louisa H. Hale, Sarah Alice Hale, Richard Bernard Hale, and James R. Cox, the guardian ad litem of the six last-named parties, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday in October next, 1876, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the eastern district of Texas, wherein The City of Brownsville is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this tenth day of June, A. D. eighteen hundred and seventy-six.

[SEAL.]

AMOS MORRILL,
Dist. Judge.

On this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-six, personally appeared W. R. McFarland, deputy U. S. marshal, before me, the subscriber, C. Dart, clerk of the U. S. circuit court for the eastern district of Texas, and makes oath
739 that he delivered a true copy of the within citation to W. P. Ballinger, one of the attorneys of record for the defendants herein, Maria Josefa Cavazos et al., in person, at Galveston, on this the 12th day of June, 1876.

W. R. McFARLAND,
Deputy U. S. Marshal, E. D. T.

Sworn to and subscribed the 12th day of June, A. D. 1876.
[SEAL.] C. DART,
Clerk of U. S. Circ't Court, E. D. T., G.

(Indorsed:) C. L. No. 887. The City of Brownsville vs. Maria Josefa Cavazos et als. Citation in error. Filed June 12, 1876. C. Dart, cl'k. Iss'd June 10, '76.

740 In the Supreme Court of the United States of America. Error from the circuit court eastern dist. of Texas, at Galveston, October term, A. D. 1876.

THE CITY OF BROWNSVILLE, PLAINTIFF IN error,
vs.
MARIA JOSEFA CAVAZOS ET ALS., DEFENDants in error. } No.

And now comes the plaintiff in error in the above entitled cause, by its counsel, and amending the original assignment of errors filed herein, assigns the following additional grounds of error in the rulings of the court below, and prays that the judgment hereinbefore rendered be reversed and reformed as prayed for in said original assignment of errors.

1. The court below erred in holding that the decree of October 15, 1827, and the proceedings under it, did not have the effect to transfer to the city of Matamoros the title to the lands in question.

2. The court below erred in not giving effect to the decree of October 15, 1827, in that it construed the word "ocupacion," occupation, as signifying a mere possession or use, and not as an absolute taking and seizin which effected expropriation of the title to the locus in quo.

3. The court below erred in not giving effect to the peremptory last notice served upon Maria Francisca Cavazos in 1834 to appear within thirty days from such notice at Victoria to settle the question of compensation, and the answer thereto given by said Cavazos declining to do so; and in construing the same as an admission on the part of the city of Matamoros and the State of Tamaulipas that the title had not been expropriated, instead of construing the said notice and answer as referring solely to the question of compensation and not to perfecting
741 of title to the land taken since 1827, and as a waiver of said Cavazos of all claim to the land, and complete submission to the previous expropriation by the government, and instead of construing such notice and answer as absolutely the last step possible or necessary on the part of the government and relating solely to the compensation for the land (if any such step were necessary), after the decree of Oct. 15, 1827.

4. The court below erred in holding that compensation in this case

should have been previously made before the title could pass out of the owner and become vested in the city of Matamoros.

5. The court erred in holding that the proceedings which took place before the congress of Tamaulipas in September and October, 1848, are authority on the law of that State and of this case, upon the construction and effect of the decree of October 15, 1827, and in giving the said proceedings any effect whatever to affect the rights of the plaintiff in error in this case.

6. The court below erred in holding that the act of incorporation of February 7, 1853, confirmed and granted no title from the State of Texas to the lands in question to the corporation of the City of Brownsville, the plaintiff in error.

7. The court below erred in holding that the repeal of the municipal charter of January 24, 1850, had the effect to repeal the grant of land therein contained from the State of Texas to the city of Brownsville, as incorporated by said act.

8. The court below erred in holding that the land embraced within the ejidos did revert to the original owners on the 19th day of December, A. D. 1836, when the respective nationalities of Texas and
742 Mexico were severed.

9 The court below erred in holding that the act of February 10th, 1852, confirmed the locus in quo to the "Garza grant" of 1781.

10. The court below erred in holding that the purpose of the expropriation became extinct or incapable of further accomplishment upon the change of nationality.

11. The court below erred in considering that the treaty of Guadalupe Hidalgo of May 30, 1848, had any effect upon the rights of Texas to the locus in quo, or upon the continuance or non-continuance of the purposes of the expropriation.

STEPHEN POWERS,
Att'y for Pl'ff in Error.

(Indorsed:) No. 901. In error. The City of Brownsville, pl'ff in error, vs. Maria Josefa Cavazos & als., def't's in error. Amended assignment of errors. Filed 26 October, 1876. S. Powers, counsel.

(Indorsement on cover:) No. 294. The City of Brownsville, plaintiff in error, vs. Maria Josefa Cavazos et al. E. Texas, C. C. U. S. Filed 26th October, 1876.

Supreme Court of the United States.

October Term, 1879.

THE CITY OF BROWNSVILLE,
PLAINTIFF IN ERROR,
vs.
MARIA JOSEFA CAVAZOS ET AL.
No. 71.

BRIEF FOR PLAINTIFF IN ERROR.

This case is a continuation of the proceedings in Basse *vs.* Brownsville, No. 109, October Term, 1874, on the docket of this court. The case was a writ of error under 25th section of the judiciary act to the supreme court of the State of Texas. On October 27, 1873, a judgment was therein pronounced refusing rule to dismiss, and consolidating the merits of the rule with the merits of the case on final hearing. *On January* 11, 1875, another judgment was rendered dismissing the case for want of jurisdiction under R. S. U. S., 709, the record exhibiting no Federal question. The opinion of this court, as printed and filed of record in the case, reads as follows:

"Mr. Chief-Justice Waite delivered the opinion of the "court. This writ of error is dismissed for want of juris- "diction. In McKinney *vs.* Saviego (18 How., 240) it "was decided that the treaty of Guadalupe Hidalgo had

"no relation to property included within the State of "Texas. The record does not show that any question was "made in the court below, or decided, as to the effect of "the act of 7th February, 1853, upon the plaintiff's title. "So far as anything does appear, the case was disposed of "without reaching that question," (Opinions, 1874, page 269;) and your Honors will remember that the case was submitted on a long oral argument from the plaintiff in error, and voluminous printed briefs from both parties. Your Honors are therefore, to a certain extent, familiar with the facts of the case.

STATE OF THE PLEADINGS.

July 9, 1872. The city of Brownsville, averring its incorporation on February 7, 1853, by act of the legislature of Texas, and that it was on January 1, 1873, seized and possessed of all that section of territory situated and lying on the left bank or margin of the Rio Grande, in the county of Cameron, formerly a part of the town tract of four leagues of land (*ejîdos*) of the city of Matamoras in the Republic of Mexico, the said tract of land embracing all the land of the *ejîdos* lying north of the Rio Grande, and between it and a line running east and west ten thousand Mexican varas in length, in such manner that a line drawn north from the centre of the main plaza of said city of Matamoras five thousand Mexican varas in extent will bisect the first-named line geometrically; which was granted and confirmed to your petitioner by an act of the legislature of the State of Texas, entitled an act to incorporate the city of Brownsville, approved January 24, 1850, and by the aforesaid act entitled "An act to incorporate "the city of Brownsville," approved February 7, 1853.

That January 1, 1872, the defendants and the Brownsville Levee Company, a corporation established by law

November 8, 1866, made entry on said tract of land and under pretence and claim of right and title thereto committed various trespasses, &c., pretending to dispose of portions of the land, setting-up ferry and wharf privileges thereto and collecting dues and tolls for the same, cutting wood and grass, all of which acts are a cloud on petitioner's title to his great damage $100,000.

Petitioner prays for citation and judgment adjudging him to be the true and lawful owner in fee-simple of the above-described tract of land, &c.; that a writ of possession issue in due form; that the defendant's claim to title be declared invalid in the law, for costs and general relief.

Record, pp. 1, 2, 3.

April 8, 1873. Maria *Josefa* Cavazos pleads Not guilty, and Charles Stillman pleads Not guilty, and reconvenes, alleging part ownership in himself by virtue of a conveyance from Maria Josefa Cavazos to said Stillman and Saml. A. Belden, and refers to the records of the district court of the county; and that January 1, 1872, said plaintiff entered upon said land of this defendant, and committed then and there divers and sundry trespasses upon the said property of this defendant, to his damage $100,000. Wherefore this defendant pleads the foregoing facts in reconvention, and prays judgment for his said damages and costs of suit.

Record, pp. 3, 4, 5.

Wm. G. Hale same day pleads exactly similar.
Brownsville Levee Company pleads Not guilty.

August 9, 1873. Jno. Treanor pleads Not guilty.

Record, p. 6.

March 2, 1875. Plaintiff demurs to the pleas in reconvention filed by Charles Stillman and William G. Hale, because said pleas do not set forth the metes and bounds, the location and limits of the land claimed by them. 2d. The description is vague, indefinite, uncertain, and affords no data by which to identify the land claimed by defendants in reconvention.

Record, p. 7.

March 10, 1875. Mrs. Cavazos, Stillman, and Hale file an amended answer and plead—1st. Not guilty. 2d. Ownership of a tract of land comprised within the limits intended to be described in the petition, *i. e.*, a part of the original Espiritu Santo grant, situated on the left bank of the Rio Grande river, and being all that part of what is intended to be described in said plaintiff's petition as the "*Ejîdos* of Matamoras," bounded as follows: * * * And being so the owner and seized and possessed of said premises, January 1, 1872, the said plaintiff unlawfully entered, &c. Wherefore she pleads the foregoing in reconvention, and prays judgment against said plaintiff for said damages and costs. 3d. Peaceable possession under good title from the proper sovereigns of the soil for 100 years; that this action was not commenced until the year 1872, and the same is barred by the statute of limitations as to three years' possession. 4th. Limitation of five years. 5th. Limitation of ten years.

Rec., pp. 8, 9.

Similar answers by Hale and Stillman, (p. 9 to 12.)

January 5, 1876. Heirs of Charles Stillman made parties, (p. 15.) Discontinuance as to Treanor and Levee Company, (p. 15.)

February 23, 1876. Heirs of W. G. Hale made parties, (p. 15.)

May 25, 1876. Plaintiff replies to Mrs. Cavazo's plea in reconvention: 1st. Not guilty. 2d. General denial. 3d. Possession for 30 years by metes and bounds. 4th. Ten years. 5th. No action for 30 years against plaintiff. 6th. For 10 years. 7th. For 3 years. 8th. For 3 years. 9th. For 3 years under title. 10th. Still for three years *actio non.*

Then replication to Mrs. Cavazo's pleas of limitation and prescription.

Rec., p. 17 to 20.

Similar replications to Stillman and Hale. That they hold under Basse and Hord, who obtained a verdict and judgment in State court; that Brownsville appealed, and the judgment was reversed.

That neither Basse and Hord nor Stillman and Hale, who acquired *pendente lite*, nor their heirs, have brought their second suit within the year and during the two years after rendition of the judgment of the supreme court of Texas. Defendants now *estopped* by that adjudication.

Rec., p. 20 to 25.

May 25, 1876. Defendants disclaim title to any lands dedicated to the public by Basse and Hoard. Jas. R. Cox for defendants.

Rec., p. 53.

And on same, they *reply* to replication of plaintiff, denying any such adjudication as alleged in the Basse and Hoard case. And as to the objection of no second suit by these defendants, they deny the same and say that their

pleas in reconvention in this action set up their title within the year after the final action of the supreme court in said case. They deny the alleged improvements.

Rec., p. 26.

May 29, 1876. Brownsville demurs to rejoinder. 1st. Allegation that their reconvention is their second suit, filed April 8, 1873—a mere defensive measure, and was not the bringing of a suit, &c.

Rec., p. 26.

May 29, 1876. Surrejoinder of Brownsville, in case demurrer overruled; sets up statute of Texas, requiring second suit to be brought in the district court of the State for the county in which the land lies, and suit in reconvention in a United States court does not satisfy the State statute. 2d. Said pleas wanting in substance.

May 29, 1879. Reply of Brownsville to defendants' disclaimer, repudiates all pretended dedication and conveyances. It never entered on the *loci publici* by virtue thereof, but by grant from Texas, January 24, 1850, adversely and hostilely to defendants and the whole world. Goes into details as to Washington Square, and the streets, lanes, alleys, mapped by Geo. Lyon before incorporation of the city. Brownsville took possession "when chartered, "and held it ever since; and now claims of defendants "affirmatively under its said paramount title all and every "right of property and possession in and to the lands of "its said grant from the State of Texas set up by them."

Rec., pp. 28, 29.

May 30, 1876. Trial, jury waived, questions of law and fact submitted to the court.

May 31, 1876. Defendants' amended plea in reconvention prays for the adjudication of the title of the premises involved in this action in favor of these defendants, excepting those portions set forth in their disclaimer. This is the first prayer for judgment on their title we find them making.

Rec., p. 30, at foot.

May 31, 1876. Brownsville replies, suit and judgment. Basse and Hord reply June 27, 1872, that Stillman and Hale acquiesced pending that suit; they died, and their interests vested in heirs and devisees. Second suit not brought within the year, nor during the two years after decision by supreme court, Texas, which decision is *res adjudicata.*

Rec., pp. 31, 32.

HISTORY OF THE CASE.

January 28, 1826, the town of Matamoras was established by the public authorities of the State of Tamaulipas, (Rec., p. 58,) and on *February* 26, 1826, (less than a month afterwards,) proceedings were regularly instituted by the town council "for the purpose of treating upon" (*i. e.*, discussing) "the survey of the town-tract or site (*ejîdos*) for "said town of Matamoras." The owners of the land were to be notified of the survey. The council appointed a surveyor and an appraiser. Mrs. Maria *Francisca* Cavazos was present, "and stated that so far as she was concerned "she would not appoint any one, (surveyor,) because there "was no examined surveyor."

Rec., pp. 59 and 60.

March 28, 1826, Mrs. *Francisca* Cavazos is "satisfied "that the superior order be carried out," but wants *her field* set aside for her and *her small farm.*

Pp. 60 and 61.

April 11, 1826, getting no satisfaction from the president of the ayuntamiento, she appeals to the superior tribunal of justice.

Pp. 61, 62.

April 18, 1826, the governor orders the alcade of Matamoras to make a report to him on Mrs. *Francisca* Cavazos' "propositions," in order that "this government may deter-"mine what is most proper to be done in the premises." The report is made; and so faithfully that we have before us Mrs. Cavazos almost in proper person.

Pp. 62, 63, and 64.

May 2, 1826, Mrs. Cavazos again petitions the governor for relief; and, listening to her prayers, he directs she shall remain in the possession of the *labor*, with the understanding that when the *ejîdos* or land-tract for said town (Matamoras) be assigned, &c., &c.

Pp. 64, 65, and 66.

June 21, 1826, this decree is read to Mrs. Cavazos, and angers her into talking like a crazy person, &c., &c.

Pp. 66 and 67.

July 10, 1826, survey made of the *ejîdos* of Matamoras, and sent to the governor, December 11, 1826.

Pp. 67, 68, and 69.

January 11, 1827, governor acknowledges receipt of the proceedings. But the delays and obstructions of Mrs. Cavazós still keep the entire population of Matamoras out of the enjoyment of their *ejîdos*.

P. 70.

April 21, 1827. They apply to the governor for relief.

Pp. 70, 71, and 72.

October 15, 1827. The government of Tamaulipas orders, in case of farther refusal to name "the corresponding ar-" biter for the indemnification of the lands which are to be " taken for *ejîdos*, the ayuntamiento will proceed to have " them *measured and used* without further summoning."

See Record, pp. 72 and 73.

December 3, 1831. A final notification was given to the owners of lands taken for the *ejîdos* under Thirteenth Constitutional Article, and within the period of twenty-five days, or a month at most, they should present themselves to the government of this State for the indemnification or compensation of the said lands.

Pp. 73 and 74.

April 19, 1834. Renewed notification to parties ordered.

P. 74.

April 23, 1834. One Serna, in the presence of a notary, makes known to Mrs. Cavazos the governor's decree, and gives her answers. The order of the ayuntamiento, signed by the president and all the members and secretary, was delivered to Don Juan Treanor, as the representative of

Don Rafael Garcia Cavazos. "He, Don Rafael, had mar-"ried Maria *Josefa* Cavazos, who was a niece of Maria Fran-"cisca Cavazos." Treanor married a daughter of Maria *Josefa* Cavazos.

Record, pp. 74, 75, 97.

February 12, 1835. Petition by Matamoras to the governor, representing that bad measurement occasions confusion in the possession in the lots and labors *asked for by the citizens*, requests leave to appoint a surveyor, subject to the approbation of the governor.

Rec., p. 290.

June 30, 1835. Shortly prior to this date, Maria Francisca Cavazos died.

Record, p. 153.

June 5, 1841. Another petition was read from citizens praying that the town-tract (*exîdos*) again be surveyed, to prevent by some means the evils they complain of; as also that they be granted one league more than the number designated in each course. After a light discussion, the survey of the town-tract (*exîdos*) was ordered to be proceeded with, previously citing the persons interested in the lands; but what they ask in addition is denied for want of power.

Record, p. 291.

June 30, 1841. Maria JOSEFA (Cavazos) de la Garza acknowledged citation and satisfaction with the appointment of surveyor.

Record, p. 294.

Here the record stops as to the proceedings in the correction of the surveys of the *ejîdos* and their distribution among the citizens; but the testimony of the witnesses shows (Rec., p. 95–99) that the *labors* were partitioned out and occupied, cultivated, fenced, and improved and built upon by actual settlers, who paid an annual rent to the city of Matamoras for the enjoyment of land, down to the time of the "American occupation," in 1846.

Rec., pp. 96, 100, 108.

That Mrs. Cavazos occupied a *labor* within the *ejîdos*, and "held it as *ejîdos land* under the corporation of Mata-"moras like all the others." "Every one had to pay" rent. This *labor* went afterwards into the occupany of Gutierrez and Miguel Salinas; the latter "occupied it till "the American occupation," and "paid rent to Matamo-"ras." And "while these *ejîdos* were under the jurisdic-"tion of Matamoras, neither Maria JOSEFA Cavazos nor "any person for her disputed or disturbed the possession "of any of the labor-holders, either in court or out of it."

Rec., pp. 96–121; also, p. 227.

This state of things existing from December, 1831, was suddenly changed by the Mexican war, beginning in March, 1846, and ending with the treaty of Guadalupe Hidalgo, ratifications exchanged at Queretaro, May 30, 1848, and proclamation of President of the United States made July, 4, 1848.

9 Statutes at Large, 922.

Texas was admitted into the Union *December* 29, 1845. *April* 5, 1846. A fort was built WITHIN THE EJÎDOS of Matamoras on grounds selected by General Taylor; and

on May 5, 1846, the Mexican army crossed the river Rio Grande and attacked this fort. General Brown, then in command, was killed, and in his honor the fort was named Fort Brown. It still exists, but the ground it covers, it is understood, is claimed by the parties here. At the time of the attack, the Mexicans profited by the presence of rude Mexican huts and improvements, existing in the *ejîdos*, in the rear of the fort.

1 Ripley's War with Mexico, pp. 102–113.

Although, by the battle of San Jacinto, April 21, 1836, and the treaty between the Generals following, and the act of the Congress of Texas, dated December 19, 1836, (Paschal's Digest, *Article* 438,) the Rio Grande was made the boundary between these countries, the evidence in this record is quite clear that Matamoras held possession of the *ejîdos*, receiving rents therefor, down to the occupation of the country by the United States. Against this occupation by General Taylor the prefect of the northern district of Tamaulipas entered a vigorous protest on March 21, 1846. (See Ripley's War, as above quoted.) But Texas always claimed, and the United States claimed after the admission of Texas into our Union of States, that the Rio Grande was the boundary between Texas and Mexico, and the war proved this claim well founded in law. The Texas indemnity bill of ten millions, (9 S. L., 446,) passed September 9, 1850, is based on this principle. As soon as it was erected, Fort Brown naturally attracted people to the *ejîdos;* the State of Texas established the county of Cameron, *February* 12, 1848, (Stats., vol 11, p. 27, of Texas,) which includes the *locus in quô*, and "about "that time the first house was erected in Brownsville."

Parker's testimony, p. 175.

As soon as the war closed the *ejîdos* of Matamoras became an object of speculation; and the ayuntamiento, besieged with applications to buy their right, whatever it might be, to the land, finally petitioned the government of Tamaulipas for leave to sell it to the highest bidder, *August* 28, 1848.

Rec., pp. 224 and 225.

September 7, 1848, Doña Josefa Cavazos petitions the governor of Tamaulipas to *return to her* her property, the ayuntamiento of Matamoras being "*without doubt that* "*these may be ejîdos.*"

Pp. 225 and 226.

September 25, 1848, the ayuntamiento replies to this petition, and urges facts and principles of law identical with those relied on here by the plaintiff in error.

Pp. 226 and 227.

October 17, 1848, the chief officer of the law department, Jesus Cardenas, reports on the case to the governor; and the committee, to the secretaries of the Tamaulipas congress. The conclusion of the congress is that "the corpo- "ration of Matamoras has not acquired any property in the "same, and in consequence it is preserved by its ancient "owners." And this was embodied in a joint resolution by the congress, was accepted by the heirs of Maria Francisca Cavazos, and operated as a release to the State of Tamaulipas from the payment of the "indemnization."

Pp. 227 to 232.

January 24, 1850. The State of Texas incorporates the city of Brownsville, relinquishing all "right, title and in-

on May 5, 1846, the Mexican army crossed the river Rio Grande and attacked this fort. General Brown, then in command, was killed, and in his honor the fort was named Fort Brown. It still exists, but the ground it covers, it is understood, is claimed by the parties here. At the time of the attack, the Mexicans profited by the presence of rude Mexican huts and improvements, existing in the *ejîdos*, in the rear of the fort.

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Pp. 227 to 232.

January 24, 1850. The State of Texas incorporates the city of Brownsville, relinquishing all "right, title and in-

"terest in the State of Texas in and to all the land in-
"cluded within said tract, that was OWNED by the town
"of Matamoras on the 19th day of December, 1836, * * *
"in trust for the use and benefit of said city, provided
"this act shall not impair private rights." And the section quoted from, the first of the act, describes the land—
"that section of territory situated and lying on the left
"margin of the Rio Grande, in the county of Cameron
"aforesaid, formerly a part of the town-tract of four
"leagues of land (*ejîdos*) of the city of Matamoras, in the
"Republic of Mexico."

See the act, Record, page 49.

July 11, 1850, the city of Brownsville ordered the survey of this tract of land—the *ejîdos* of Brownsville; this survey was based on the "survey of Doctor Lewis Bel-
"guder, surveyor for the city of Matamoras;" was made in July and August, 1850, sworn to October 5, 1850, and forms the first piece of evidence introduced by plaintiff and appellant.

Rec., p. 45, *et seq.*

November 28, 1850, the city of Brownsville contracted for the building of a market-house on the site determined on previously: and, *as owner of the land*, was awarded by the county court of Cameron county a ferry license for two or more years. (Rec., pp. 76 to 87–87.) For other years see p. 166.

December 11, 1850. Basse and Hord dedicate certain properties to the city of Brownsville, AS EASEMENTS, for streets, promenades, &c., RESERVING THE FEE.

Rec., p. 164.

It does not appear what title to this property Basse and Hord had at this date.

January 8, 1852. Repealing act of charter of Brownsville city, and to be in force from and after March 1, 1852.

Rec., p. 145.

February 10, 1852. An act of the legislature of Texas relinquishing all her right and interest in the following-described lands to the original grantees thereof:

9. Rafael Garza, 7 leagues, "Santa Isabel."

35. Ignacio Traveno, 5½ leagues, "San Martin."

38. Manuel de la Garza Lasa, 6 + leagues, "Buena Vista."

42. *Jose Salvador de la Garza*, 59⅓ *leagues*, "*Espiritu Santo*."

This act imposed the duty on the claimants of surveys and deposit thereof in the (State) general land office. Patents were to be issued, but not for a less amount than the original grant, and claimants were obliged to pay State taxes from the date of the organization of the county before issuance of patents. Loss of titles is provided for, and reports of the land commissioners to be recorded; and the confirmation declared not to interfere in any way with vested rights of other parties, and not to apply to islands or salt-lakes.

Rec., p. 145.

April 14, 1852. Cavazos, husband, and Maria *Josefa*, his wife, sell to Elisha Basse and Robert H. Hoard a certain tract of land lying on the left bank of the Rio Grande, in the county of Cameron, opposite the city of Matamoras,

including the site of the town of Brownsville, and bounded as follows, &c., &c.

Rec., p. 155.

[The date of record of this sale nowhere appears.]

February 7, 1853. Act of Texas incorporating *over again* the city of Brownsville. All the rights in action and claims of any kind which were held, OWNED, occupied, and enjoyed by the citizens of Brownsville under the first charter, as well as all liabilities vested in the city of Brownsville by the eighth section.

Record, p. 54.

November 20, 1853. Agreement of owners to divide the Espiritu Santo lands.

Rec., p. 153.

[The devolution of title from Basse to Hoard seems unimportant and undisputed.]

April 14, 1854. Basse and Hoard brought their action, trespass to try title, against the city of Brownsville.

June 27, 1872. The suit was dismissed by the supreme court of the State of Texas.

36 Texas Rep., p. 461.

[This is the case where a writ of error from United States Supreme Court was dismissed for want of jurisdiction.]

July 9, 1872. The city of Brownsville entered this suit, and the pleadings are hereinbefore detailed.

July 9, 1876. The judgment of the lower court was rendered in favor of the defendants, and city of Brownsville has taken this writ of error.

The great question in the case is, Who owns the site of the city of Brownsville—the plaintiffs or defendants?

ASSIGNMENT OF ERRORS.

FIRST. The court erred in overruling the demurrer of plaintiff, filed May 29, 1876, (Rec., pp. 26 and 27,) to the rejoinder of defendants, Stillman's and Hale's heirs, filed May 26, 1876, (Rec., p. 26,) as stated in the plaintiff's first bill of exceptions.

Rec., p. 313.

SECOND. The court erred in overruling the surrejoinder of the plaintiff, filed May 29, 1876, (Rec., pp. 27 and 28,) to the rejoinder of defendants, Stillman's and Hale's heirs, filed May 26, 1876, (Rec., p. 26,) and in deciding and ruling that the several pleas in reconvention filed by the former defendants, Stillman and Hale, April 8, 1873, (Rec., pp. 4 and 5,) were such pleas in reconvention as to maintain an action for the recovery of the lands in question *de novo*, as stated in plaintiff's second bill of exceptions.

Rec., pp. 313 and 314.

THIRD. The court erred in sustaining the rejoinder of the defendants, Stillman's and Hale's heirs, filed May 26, 1876, (Rec., p. 26,) to the replication of the plaintiff, filed May 25, 1876, (Rec., pp. 20, 21, and 22,) pleading a former recovery by the plaintiff of the lands involved herein against the grantors of said defendants who acquired the same *pendente lite*, the said replication of plaintiff being to the several pleas in reconvention of said defendants, filed April 8, 1873, (Rec., pp. 4 and 5,) and in overruling the said plea

of former recovery, as stated in plaintiff's third bill of exceptions.

Rec., p. 314, where it is erroneously marked No. 4.

FOURTH. The court erred in allowing the defendants leave to annul their amended pleas in reconvention, filed March 10, 1875, as stated in the plaintiff's fourth bill of exceptions.

FIFTH. The court erred in overruling the replication of plaintiff, filed May 31, 1876, to the amended and second amended pleas in reconvention of the defendants, Stillman's and Hale's heirs, filed March 10, 1875, and May 31, 1876, as stated in the plaintiff's fifth bill of exceptions.

SIXTH. The court erred in overruling the motion of plaintiff to suppress the depositions of F. J. Parker, F. Yturia, Henry Klahn, H. M. Field, and Antonia Yznaga, as appears by the exception reserved by plaintiff in the statement of facts by the court.

Rec., pp. 167, 168.

SEVENTH. The court erred in overruling the objections of the plaintiff to the introduction and reading in evidence by the defendant, and in allowing to be read in evidence the petition of John Treanor, for Rafael Garcia Cavazos to the government of Tamaulipas; the petition of the ayuntamiento of Matamoras to the said government; the report of the governor of said State to the congress thereof on the said petitions; the report of the committee of the ayuntamiento and its action communicated to the governor; the order of the said governor calling for the said report of said ayuntamiento; the report of the governor to the congress of said State; the report of the committee of said

congress to the same, and the resolution of said congress on the matter involved in said petition, orders, and reports, all dated from September to October. Objected to for the reasons stated in the statement of facts by the court, and the exception reserved thereon.

Rec., p. 224.

EIGHTH. The court erred in its findings of fact and of law in this cause, as set forth in said statement of facts and the exception reserved therein.

NINTH. The court erred in entering judgdment against the plaintiff and for the defendants on their plea of not guilty and general denial.

TENTH. The court erred in entering judgment against the plaintiff and for the defendants on their pleas of reconvention, adjudging the title to the lands herein involved to be in the said defendants, and that they recover the same from this plaintiff, with costs.

Wherefore plaintiff prays that the said judgment of the said circuit court be reversed and the same be reformed by this Hon. Court, and that plaintiff have judgment that it is the owner and seized of the lands involved herein, and for the recovery of the same against the defendants in this cause, with costs.

ARGUMENT.

I.

Towns in Mexico were usually laid out in and made to embrace superficial squares, having for their central point

the *plazas*, and measuring two Spanish leagues on each side

1 White's Recopilacion, 438, art. 34.
2 White's Recopilacion, pp. 44, 46.

If, after the survey of a proposed town-lot, it was found that the surface included in these square leagues belonged to and was owned by, or the title to it was vested in, one or more private persons, then the necessary steps were to be taken to ascertain who these owners of the land were, and to provide for remuneration, to be made in accordance with law, in case said land should be private property.

When the survey was made and a decree rendered that the lands were required for public utility, the entire surface of the square leagues ceased to be *private* property, and became *communal* property.

Communal property was of two kinds; that which was *out of commerce*, such as streets, roads, ways, public squares, buildings, &c., and that which was *in commerce*, such as the city might sell or lease or permit the inhabitants to make use of, so long as the authorities deemed proper.

2 Marcadé, 383.
See Klein *vs.* New Orleans, April 7, 1877.

All this is clearly shown in the history of this case. The square leagues constituting the town-plat became, by the expropriation of the property for public utility, the *communal* property of the city of Matamoras. Nothing short of full, entire, complete, perfect OWNERSHIP was acquired by the city; and the quality of this ownership was intensified in its transmission. From *private* ownership, it was converted into *public* ownership. The soil was freed

from every *jus in re*, and the rights of the holders thereof transferred *from* the property *to* the indemnification provided for by law.

In this case, we see the actual operation of these legal principles. Streets, lanes, roads, and highways were laid out, and this portion of surface of the soil was thus removed from commerce permanently. And the city of Matamoras, by public law, derived a fixed revenue from that other portion of the land which remained in commerce; namely, from the *labors*, [" mere rights of use and " occupation "—definition of supreme court of Texas in Basse and Hoard *vs.* Brownsville, 36 Texas, 461;] the portions of the soil hired out by the city to occupants for cultivation and improvement. One of these occupants was the original part-owner of the site of the exidos of the city of Matamoras; she had been expropriated in due form of law, after many querulous and unavailing objections. For many years—from 1831 down to the pointing of the American cannon against the city of Matamoras from the just-erected fort within its very boundaries—Maria *Francisca* Cavazos and her universal legatee had occupied one of these labors, "*her field and her little farm.*" They had recognized Matamoras as their legal lessor, and paid to it the rent for her *labor*, during all this period of time; a recognition of OWNERSHIP in Matamoras, *juris et de jure*, a presumption as ancient as the law itself.

When, therefore, under the treaty between General Houston and the Mexican generals after the battle of San Jacinto, and by the act of Texas Congress of December 19, 1836, (Paschal's Digest, art. 438,) the Rio Grande del Norte was made the boundary, all the site of the exidos of the city of Matamoras on this side of the river ceased to belong to Mexico and the city, and became vested in full OWNERSHIP in Texas. In 1845 the United States became subrogated

to all the rights and assumed all the obligations of Texas as an independent State; it was conclusively proved, by the result of the war, that the Rio Grande had been from that date, (December 19, 1836,) the boundary between the two countries; and by the admission of Texas as a State into the Union, the complete, perfect ownership of the *locus in quo* was thus continued from December 19, 1836, down to the incorporation of the city of Brownsville, the plaintiff in error, January 24, 1850, when *this perfect ownership*, thus acquired by Texas, was PASSED by her to the municipality thus incorporated.

See Lawrence's Wheaton's International Law, p. 98, note, ed. 1863. *Id.*, p. 68 and note.
Fleming *vs.* Page, 9 Howard, 603.

II.

This plain, simple, and reasonable statement of the case of the plaintiff in error accords entirely with the juridical facts of the case set forth in the opinion of the lower court. The main and important question for decision arises from a consideration of the results flowing from the expropriation-proceedings against Mrs. Maria *Francisca* Cavazos, involving the town-site of Matamoras on this side the Rio Grande—which seems to be a ~~fine~~ question of law. Whilst the validity of this decree of expropriation is, in the lower court's opinion, somewhat reluctantly admitted, it is there freely asserted, "The true construction and effect of the "decree are *alone* to be sought by us." "We are to look "at all the circumstances of the case, the conduct of the "parties, the Government's own views on the subject, and "any other light within our reach."

All this is correct and reasonable, and in continuation it is announced, "that the most obvious view of the ques-

" tion as it first presented itself to my mind "—the reasons are given—was " that the expropriation was complete, but " the party had a reserved right to claim idemnification " whenever she chose to ask for it and comply with the " constitutional requisition." But this most obvious view, which we have plainly set forth above as the true one, was at last denied to be true, and its contradictory was made the judgment of the court below on the following grounds, viz:

(*a.*) That the expropriation decree only authorized *occupation by* Matamoras, and not *ownership;* that the city was *usufructuary*, not owner.

(*b.*) That this decree was only *executory*, and never was executed by either party to it.

(*c.*) That according to the opinion of the Mexican lawyers, given *after* the treaty of Guadalupe Hidalgo, the decree of confiscation did not have the effect to transfer to the city of Matamoras or the State of Tamaulipas " THE " TITLE " to the lands.

We will consider these in their order.

The right of eminent domain—expropriation for cause of public utility—the compulsory transfer of property, is based on the principle *salus populi suprema lex.* The first law of society, that the general interest shall be preferred to that of individuals, subjects every individual tacitly to the obligation of yielding any particular property " to the community *wherever it becomes necessary for the* " *general use.*" If the individual fails to comply with this tacit obligation, if he refuses to give up the property for public use or demands an exorbitant price for it, he may be divested of the property by the authority of the law. It

is the very same doctrine of force which extended the territory of Texas to the Rio Grande, sanctifying her title to those limits; the same doctrine under which your marshal would enforce an execution issued by your Honors, by a compulsory seizure and sale of the debtor's property to pay the judgment entered against him.

Maria Francisca was an individual thus holding property; she was *expropriated* from a portion of it by due legal proceedings for the utility of the public. What did the public want? What was the object in view by the proceedings?

Now, can there be a doubt what this want and this object were? For immediately present, and near as well as remote future and public utility, the *occupation* was the WANT and the *sole* object in view. The citizens wanted the soil *partly* for streets, lanes, alleys, ways, &c. They wanted the soil *partly* to improve and cultivate it when laid out and surveyed; not to hold it themselves as owners, but by the well-known emphyteutical contract with the city of Matamoras *as owner*. In short, they, as citizens bound together in a municipality, wanted permanent possession, *occupation in perpetuity* of the lands, not as usufructuaries, but owners. According to the *jus civile* there could not be a perpetual usufruct.

"*Ne tamen in universum inutiles essent proprietates,*
"*semper abscedente usufructu, placuit certis modis ex-*
"*tingui usumfructum, et ad proprietatem reverti.*"

Dig. Lib. VII, Tit. I, l. 3, § 2.
Inst. II, Tit. IV, § 1, *ad fin.*

A title-deed was not wanted, except as a very remote incident. Title was a matter of no direct public utility or importance. Title without *occupation in perpetuity* would

be totally worthless as to these citizens in their corporate capacity; possession, even without title, as to them, was *the one thing needful.* In all exercise of the right of eminent domain, the one sole predominating impulse, aim, intent, and purpose is the desire of immediate and perpetual occupancy and possession. The proceedings in expropriation are always *in rem;* never *in personam.* They never involve a question of the title directly. The proceeds of the indemnification wait upon the title; but the expropriator is altogether indifferent as to that; he, by no legal possibility whatever, can be made to pay TWICE for the same piece of property; and when he does pay, he pays the *whole market value* of the *entire and perfect ownership.*

Boom Co. *vs* Patterson, 98 U. S., 403.

The judgment, therefore, awarding the "occupation and survey" was a final judgment; it was *the substance of the thing desired;* it gave the inhabitants their streets, roads, and little farms; the former, as public property leading to all the ends of the earth, and dedicated to the entire human family choosing to make use of them; the latter, as lessees of *the true owner, the city of Matamoras*—an *ownership* which they recognized, *juris et de jure,* by the payment of annual rent. The commune, by this judgment, acquired the property by a vested right; it became, in its entirety, COMMUNAL PROPERTY; it was, in every way possible, divested out of our Maria *Francisca.* In the eye of the law the indemnification was in hard cash, duly consigned and deposited for her account in the coffers of the State, and only awaiting her acceptance and her action at the domicil of her debtor, the treasury of the State of

Tamaulipas at the city of Victoria. "In no other supposition can your Honors indulge."

Gibbons *vs.* The United States, 8 Wall., 274.

As to her, the *expropriation was complete.* The law was without power or authority to *force* her to accept the indemnity-money or do any other act. She could not be compelled *vi et armis* either to take the money or make the title. It was, besides, quite needless to constrain her to do either. As for her, theoretically at least, and in this instance practically, the question was one of subjective will. The law did not intend to try *to force her will* in these respects, for that is absolutely free, and so quite outside of the sphere of State or national law.

Nor could any different judgment in such a case be readily conceived. The expropriation for public utility is a proceeding, *universitas juris;* actually *in rem*, but involving the personal rights of all individuals, juridical and natural, constituting the community. As there can be no prize-case, no bankruptcy case, no succession, no liquidation of a corporation, without an adjudication of prize, a decree of bankruptcy, a finding of the death, a forfeiture of charter; so, in an expropriation for public utility there must be, *first*, a decree awarding occupancy in perpetuity and survey, without which, it is clear now, there can be no expropriation. The sailors have no interest in the personal ownership of the ship libelled as prize; the citizens, no interest in the personal ownership of the lands expropriated. In the first, the condemnation as prize [and the case is precisely the same with a decree of forfeiture] vests the OWNERSHIP of the vessels; in the second, the condemnation "wanted for public utility," vests the OWNERSHIP of the lands. Otherwise, it would be the condemnation of some-

thing *less* than the ship or the lands; a lien on the ship or a servitude on the lands; the latter being totally inconsistent with the letter and the meaning of the expropriation proceedings and the decree therein. Nothing was further removed from the minds of the judges in condemning the *ejidos* than the concept that they were *expropriating only* A SERVITUDE. In all cases of expropriation, it is full and perfect ownership (LA PLÉNITUDE DES DROITS DE PROPRIÉTÉ) which is expropriated and paid for, unless the contrary explicitly appears in the proceedings and decree; and the public possession, notorious, actual, hostile, continuous, coupled with the judicial proceedings, are *per se* conclusive on the title, and the latter cannot be contradicted by parole.

Schenck *vs.* City of Paris, Sirey, 33, 2, 219.
See Custis *vs.* Turnpike Co., 6 Cranch, 236, as to the vesting of the title by the inquisition.

See Kohl *vs.* United States, (91 U. S., 376,) where it would appear as though the indemnification was something absolutely separate and apart from the decree *that the land be taken.* "But there is no special provision for "ascertaining *the just compensation to* be made for land "taken. THAT is left *to the ordinary processes of the* "*law*," &c.

See Mills on Eminent Domain, § 50, and authorities cited.
Craig *vs.* Mayor, 53 Penna., 477.

Indeed, it is in many cases quite impossible to liquidate the indemnification until long after the property has vested in the expropriator; and the distinction between a judg-

ment of expropriation and a judgment for the indemnification-money is radical and visceral.

Schuylkill Canal *vs.* Thoburn, 7 S. & R., 411.
Garrison *vs.* City, 94 U. S., 204.
Locré, 9 vol., pp. 710, 718.
1 Le Lalleau, traité de l'expropriation, p. 287, *et seq.*, and the many authorities cited.

It is quite impossible, we think, for Maria *Francisca* Cavazos to put a construction on these expropriation proceedings which would warrant her in claiming any title to the lands as owner. The manifest effect of the decree authorizing occupation in perpetuity and survey was *res adjudicata* as to her. It must be considered as though a regular consignment of the price had been made to her and was still on deposit with the authorities of Tamaulipas. The rule of universal law is: *Quotiens per eum cujus interest conditionem non impleri, fiat quo minus impleatur, perinde haberi, ac si impleta conditio fuisset.* (Dig., Lib. L, Tit. XVII, l. 160.) He who being interested in the fulfilment of a condition puts obstacles in the way of the accomplishment thereof causes it to be held *executed.* In other words: *Prevention is equivalent to performance.* As long as Maria *Francisca* refused to receive her money, the performance of the obligation of payment on the part of the public was suspended. But this affected not at all the vesting of the property. If public improvements could be checked in this way; if public streets, roads, &c., fronting on which citizens had built, and if lands cultivated under emphyteutical contracts could thus be claimed as private property by one who had purposely abstained from taking part in the expropriation proceedings, though duly notified, it would disturb the very foundation of public property.

99 E. C. L. R., 586, Dawes *vs.* Hawkins.

For the doctrine has always been immutable in all countries, that once "a street, road, alley, route, square, always "a street," &c. The streets and roads through these *ejîdos* are fully proved; they still exist, and have never been closed by any competent authority. The lower judge decrees that these streets and roads traversing the *ejîdos* would be likewise private property, were it not for a dedication to the public, not by the real owners, but by mere speculators in lands without the slighest claim to the ownership of them at the time of the simulated dedication. *Non dat qui non habet.* A *dedication to the public, reserving the fee!*

Rec., p. 165.

On principle and authority, therefore, the court below has failed to make a true construction of the decree and the proceedings under it, and erred in deciding that they "did not have the effect to transfer to the city of Mata-"moras 'THE TITLE' to the lands."

Of course we understand the word "title," as used here, to mean ownership in the city; not the mere paper or parchment title, the evidence of ownership; for it is quite beyond all dispute that no expropriation law can compel any citizen to sign such a title unless he pleases, or force him to take his money, awarded as indemnification, against his will.

"The circumstances of the case," therefore, do not justify the consequences drawn from them in the decree below. Nor can such a result be derived from the "conduct "of the parties." That the expropriation proceedings, when a final conclusive judgment of condemnation was reached, became "*executed*" and ceased to be "*executory*," is proved against Mrs. Maria *Francisca* Cavazos by her

occupancy of her little farm and by her annual payment of rent. She took not a step to set aside or annul the proceedings in any way during her life. The court below says: "But the question of indemnity would not be laid. "It was agitated until the death of Mrs. (Francisca) Cavazos "in 1835, and afterwards until the United States took pos- "session of the country in 1848, up to which period the "State of Tamaulipas continued to exercise *de facto* juris- "diction over the country."

To us all this agitation is fanciful. The record shows not a fact to support it. Mrs. *Francisca* Cavazos never *agitated* in any way *the question of indemnification*. She acquiesced in the expropriation of her property, and paid rent for a part of it to the city of Matamoras down to her death. So, too, did her successors afterwards. It is true, she never took a step in any way to liquidate her damages and collect her money. Perhaps the agitation alluded to was among the citizens holding *labors* for a survey, to determine more accurately the boundaries of their holdings.

Record, p. 290.

But admit, *argumenti gratia*, that this agitation of indemnification would not be laid and continued to exist, what then? The clause of the Constitution of Tamaulipas reads: "When it shall become necessary for an object of "a common recognized utility to take the property of any "person, he shall be first compensated upon the examina- "tion of arbitrators appointed by the State and the inter- "ested party." The argument assumes that this constitutional law being violated and no compensation made for the property, *therefore* there has been no *ejîdos* to the city of Matamoras for over twenty years down to 1848, the date fixed by the court below; that no rent has been legally paid to or collected by Matamoras from the holders of *labors;*

that no *communal* property, either in or out of commerce, ever existed in the streets, roads, pathways, leading to and from the city or the *labors* within the *ejidos*. We have seen this doctrine of absolute nullity pushed to great extremes, but never so far as here. The absolute nullity of judicial proceedings is pronounced here, collaterally, in favor of that suitor whose own acts have *produced the alleged nullity*. But the facts of the case show what the common lawyers call an "accord and satisfaction." After the treaty of May 30, 1848, to wit, on September 7th of that year, Maria *Josefa* Cavazos, by her attorney, John Treanor, petitions the governor of Tamaulipas to restore to her the *ejîdos* of Matamoras, which that city is *about to sell* to the "North "American Individuals." And thus it appears that, even after the treaty, the right of Matamoras was considered of some value to the land speculators; and what the opinion of this right was and of its value may be seen by the prayer of the ayuntamiento to the governor for permission to sell to the highest bidder, and its reply to Mrs. Maria Josefa's representations. The matter was referred to the law-officers of Tamaulipas; and in their well considered opinion and in the interest of their constituents, they advised that a *settlement* be made "by means of an act *con-* "*ciliating* the rights of the proprietors with the *obligation* "*which the State is under*," returning to them their prop- "erty and *releasing this* (*State*) *from the responsibility of* "*indemnifying them:*" all of which was duly carried into effect, as per resolution of October 20, 1848. (Rec., pp. 231, 232.) It is quite true that in law the *ejîdos* had belonged to the independent Republic of Texas, *de jure*, from December 19, 1836; that not a vestige of right of property after that date remained or existed in Mexico or in any of her citizens, natural or juridical; that this fact was well known to the Mexican law-officers, who perceived

very clearly that by *a retrocession* of the property or any equivalent thereto their principals would not only escape the payment of the previous indemnification still in law on consignment and deposit in their public treasury, as well as all liability for the proceeds of the rent of the *labores*, but would likewise transfer to Texas all the litigation incident to the subject-matter. They also knew something about the far-famed trial by jury in civil suits in the United States, and THE CHANCES involved in such a trial; and were quite satisfied that it was an excellent bargain for them to give up a most doubtful right, *a chance before a jury*, to Mrs. Maria *Josefa*, in return for *entire liberation* from an *indebtedness* which could be liquidated and collected at any time: from a Mexican stand-point no other conclusion was possible: and from no other stand-point could the learned jurists view the case. Take, for instance, "the proposition" laid down by them. "The proprietors "whose lands were taken for the *ejîdos* of the ayunta- "miento of Matamoras not having been indemnified as yet, "and as this corporation can *neither sell nor possess com-* "*munity* (*communal*) *property in foreign territory*, the "lands which the *primitive owners were obliged to grant*, "situated on the left of the Rio Bravo, will return *to them* "by right of REVERSION without the rentees being able to "prescribe them, as their possession has been precarious "in the name of the ayuntamiento which granted them as "rent, and consequently the State, being FREED OF THE RE- "SPONSIBILITY IT HAD OF MAKING THE CORRESPONDING INDEM- "NIFICATION." It is abundantly clear from the entire proposition which sums up the argument that it is based on two main questions of fact, and involves no point of law. The *first* fact is: No previous indemnification. The *second:* By the war, "the cause or motive of public utility, in virtue "of which the proprietors were compelled to give up their

" lands, has ceased." The *first* fact cannot affect the plaintiff in error in the slightest; at least, it is *res interalios acta*, and we show a consideration given and accepted in full satisfaction by Mrs. Maria *Josefa* Cavazos for her claim; the *second*, by the war, though the cause of public utility *ceased* as to Mexico, it always *existed and was and still is in full force as to Texas.* So, persistently and continuously from December 19, 1836, that State has always claimed *these ejîdos* as communal property; that they belonged to her, and as such they have been recognized and treated by all her departments. As to her, they never were *private* property. True it is, your Honors will look in vain through these translations of Mexican documents for that word—"TEXAS:" but beyond all doubt if "cer-" tainly the Government of the United States, *with or with-*" *out reason*, can claim the lands which the ayuntamiento " pretends to alienate, considering them as *public prop-*" *erty*, and not belonging to individuals," Texas can, with as much justice, make a similar claim.

If regarded as a *transaccion* (*i. e.*, compromise) under the civil law of Spain, the legal result is certain.

Escriche, verbo *transaccion*, p. 1580, ed. 1876.

And the fact that Tamaulipas owed the indemnification-money is clearly proved by the Mexican lawyers, who recognized distinctly Mrs. Maria Josefa Cavazos *as a creditor*, but entitled, for the reasons they give, to a *restitution* of the property. And to this judicial restitution of the property they proceeded with all reasonable diligence and due observance—but only of form. In substance, not a vestige of legal right existed in Tamaulipas when she made restitution. The legal relation between Tamaulipas and Mrs. Cavazos was that of debtor and creditor—not that of usufructuary and owner; and had there been no

war, no treaty, no change in the public government over *the locus in quo*, Tamaulipas never could escape the payment of the indemnification-money to Mrs. Cavazos by any *restitution* of the property without that lady's express consent.

"The State cannot, by renouncing the benefit of a judg-"ment of expropriation for public utility, force the expro-"priated owner to take back his property, even though the "indemnity has not yet been liquidated."

Delalleau, No. 357.
Sirey, vol. 32, 2, 337.

The question continually recurs, what was the character and quality of the property in *the ejîdos* when they vested in Texas? It was a vested right of perpetual occupancy, possession, and use; complete, full, perfect ownership under all systems of law—*jus fruendi, utendi, abutendi:* a right to retain, enjoy, and dispose of. The attempted distinction between "property" and "occupation" in the opinion, while noteworthy for its astuteness, has no foundation in the civil law, and is repudiated even by Coke in the common.

Coke on Lytt., *Verbo* "Discents," section 409.
3 Coke's Inst., p. 41.
Munson *vs.* Hallowell, 26 Texas, 475.

In the system of civil law which is the foundation of Mexican jurisprudence, the terms "occupatio" and "pos-"sessio" are not synonymical.

"Occupatio" may be taken in its original sense to mean a seizure or capture of an object with the intention of becoming owner of it. Thus the Digest says: "*Si ager ab*

" *hostibus occupatus, servusve captus liberatus fuerit,*
" *juri postliminii restituetur usufructuarius.*"

Dig., Lib. VII, Tit. IV, l. 26.

The term "occupatio" is frequently used in such a relation to "possessio" as shows the distinction between them; thus, "*Æquissimum ordinem prætor secutus est.*
" *Voluit enim primo ad liberos bonorum possessionem*
" *contra tabulas pertinere; mox, si inde non sit occupata,*
" *judicium defuncti sequendum.*

Dig., Lib. XXXVII, [illegible] Tit. XI, l. 2,

" *Qui ad nundinas profectus, neminem re liquerit, et*
" *dum ille a nundinis redit, aliquis occupaverit posses-*
" *sionem, videri eum clam possidere, Labeo scribit.*"

Dig., Lib. XLI, Tit. II, l. 6, § 1.

" *Item si occupaverit vacuam possessionem, deinde ve-*
" *nientem dominum prohibueris, non videberis vi posse-*
" *disse.*"

Dig., Lib. XLI, Tit. III, l. 4, § 28.

See also *Escriche, Diccionario razonado de Legislacion y Jurisprudencia, verbo Ocupacion:* " *Por el derecho*
" *civil, la ocupacion viene à ser un titulo de propriedad*
" *transmisible por donacion, sucesion, venta, com-*
" *muta y otros contratos.*"

It vested in Texas as owner just as it was in M
and Mexico; its communal character, impresse
property by the authorities of Tamaulipas, could be
changed only by the power that so constituted it, or by the

war, no treaty, no change in the public government over *the locus in quo*, Tamaulipas never could escape the payment of the indemnification-money to Mrs. Cavazos by any *restitution* of the property without that lady's express consent.

"The State cannot, by renouncing the benefit of a judg-
"ment of expropriation for public utility, force the expro-
"priated owner to take back his property, even though the
"indemnity has not yet been liquidated."

Delalleau, No. 357.
Sirey, vol. 32, 2, 337.

The question continually recurs, what was the character and quality of the property in *the ejidos* when they vested in Texas? It was a vested right of perpetual occupancy, possession, and use; complete, full, perfect ownership under all systems of law—*jus fruendi, utendi, abutendi:* a right to retain, enjoy, and dispose of. The attempted distinction between "property" and "occupation" in the opinion, while noteworthy for its astuteness, has no foundation in the civil law, and is repudiated even by Coke in the common.

Coke on Lytt., *Verbo* "Discents," section 409.
3 Coke's Inst., p. 41.
Munson *vs.* Hallowell, 26 Texas, 475.

In the system of civil law which is the foundation of Mexican jurisprudence, the terms "occupatio" and "pos-
"sessio" are not synonymical.

"Occupatio" may be taken in its original sense to mean a seizure or capture of an object with the intention of becoming owner of it. Thus the Digest says: "*Si ager ab*

" *hostibus occupatus, servusve captus liberatus fuerit,*
" *juri postliminii restituetur usufructuarius.*"

Dig., Lib. VII, Tit. IV, l. 26.

The term "occupatio" is frequently used in such a relation to "possessio" as shows the distinction between them; thus, " *Æquissimum ordinem prætor secutus est.*
" *Voluit enim primo ad liberos bonorum possessionem*
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" *transmisible por donacion, sucesion, venta, compra, per-*
" *muta y otres contratos.*"

It vested in Texas as owner just as it was in Matamoras and Mexico; its communal character, impressed on the property by the authorities of Tamaulipas, could be changed only by the power that so constituted it, or by the

successor to this power. This change could never be made by Tamaulipas for want of power, and the *ejîdos* are in law still *communal* property as to her. What rights Texas acquired therein were conveyed and passed to Brownsville, and it necessarily follows that the right of the State of Texas to these *ejîdos* lies at the very foundation of this case.

The foregoing views are fully sustained by—

Bass *vs.* Brownsville, 36 Texas, 461.

All the public property of Mexico, this side of the Rio Grande, vested *de jure* in Texas, December 19, 1836; *de facto et de jure*, when Texas was admitted as a State into the Union, and the United States took possession of the *locus in quô*. We claim no greater rights for Texas and Brownsville than Mexico possessed at any time prior to the treaty of Guadalupe Hidalgo, May 30, 1848; these rights in Mexico, whatever they were, vested then in Texas; Mexico relinquished all the rights she had; no subsequent act, on her part, could in any way enlarge or restrict the rights then acquired by Texas.

Vattel, Book 3, chap. 13, p. 387, *et seq.*

We have shown that, by a valid decree of expropriation on account of public utility, existing from October 15, 1827, to May 30, 1848, the *ejidos* were established and continued to that date as *public, i. e., communal* property, in fact as a part of the property of the city of Matamoras; and that as such public or communal property it existed on the public records of Mexico in the decree of expropriation. When the treaty was made, had these *ejîdos* been on the other side of the Rio Grande they would, under article 4, have been restored as public property; and as such Mexico

would have claimed them from Texas and the United States. (See Fleming *vs.* Page, above quoted.) And if the entire city of Matamoras had been on this side of the river the character of the property would not have changed, and Tamaulipas, on the other side, would still owe the indemnification money to Maria Francisca. To impose any moral or legal obligation under these circumstances upon either Texas or the United States to pay the debt of Tamaulipas to Mrs. Cavazos would be to introduce a very dangerous precedent into the law of nations.

Broughton *vs.* Pensacola, 3 Otto, 266.
New Orleans *vs.* Clark, 5 Otto, 654.

III.

The conclusion of the lower judge on what *passed* by the decree of expropriation to the city of Matamoras is somewhat vague, and indeed so little relied on by him as to need but little farther discussion. It is expressed thus: "In the light of this decision [of the Mexican jurists] and "of the other transactions which took place after the "decree of October 15, 1827, we are brought to the con- "clusion that the decree and the proceedings under it did "not have the effect to transfer to the city of Matamoras "THE TITLE to the lands." We have striven to show that this is only true as *to the paper evidence of transfer*, and erroneous in every other particular. When the lower judge says, "Expropriation is a seizure of *so much* of the "owner's property as is necessary for the public purpose," the *so much* has reference to quantity alone, the amount of soil taken; not the quality of ownership, occupancy, possession, &c.; a plain distinction apt to be overlooked.

Wallach *vs.* Van Ryswick, 92 U. S., 211.

"A seizure of *more* by adverse proceedings would be "an abuse of the power." Here the "*more*" contains the very same error. The condemnation of the property is equivalent to a conveyance of *all* ownership, not *more or less of it.* Abuse of the power of eminent domain cannot be predicated of decrees of a competent court of law expropriating private property. Such an abuse of power, in any theory of the law, would be a juridical impossibility.

IV.

But not much dependence seems to be placed on the conclusion that the expropriation proceedings made the property public only so long as the purpose of expropriation became incapable of farther accomplishment, or ceased to exist. So far as Texas is concerned, she has made no declaration whatever that the property expropriated is no longer wanted; that the streets, roads, &c., must be shut up; that *the labors* shall revert to the original proprietors thereof; and until this be done those expropriated are without any right to the property.

But admitting that the expropriation proceedings had the result we have claimed for them, then it is contended there is another point fatal to us, namely, that the State of Texas "did not convey any property to the present corporation "of Brownsville, even if it had any to convey."

We have heretofore shown the fatal admission of the judge below as to the validity of the expropriation proceedings, his error lying in the deficient estimate of the results flowing therefrom. So, on the present point, we start with his admission that the first charter of the city of Brownsville "relinquished to the corporation all the right, "title, and interest of the State in and to the land that was "OWNED by the town of Matamoras on December 19, 1836."

This is the very language of the charter. If Texas owned *the ejîdos*, she transferred them to the city of Brownsville. But the charter of the city of Brownsville was repealed, " and with it the estate, if any was acquired, reverted to " the State of Texas."

The following are the sections of the three acts incorporating, repealing the charter of, and re-incorporating the city of Brownsville:

An Act to incorporate the city of Brownsville: approved January 24, 1850.

" Section 1. *Be it enacted by the Legislature of the* " *State of Texas*, That the citizens of Cameron county, in " the State of Texas, residing within the limits of that sec- " tion of territory situated and lying on the left margin of " the Rio Grande, in the county of Cameron aforesaid, " formerly a part of the town-tract of four leagues of land " (*ejîdos*) of the city of Matamoras, in the Republic " of Mexico, be, and they are hereby declared a body " politic and corporate, by the name and title of the 'City " 'of Brownsville,' and by that name may sue and be sued, " implead and be impleaded in all courts and in all actions " and matters whatsoever, and by the same name may, by " deed of gift, grant, or purchase, hold and dispose of any " estate, real or personal, within the limits of said city, for " the use of the corporation, and may have a common seal, " which they may alter and change at their pleasure, and " all the right, title, and interest in the State of Texas in " and to all the land included within said tract, that was " owned by the town of Matamoras, on the 19th day of " December, 1836, shall be, and is hereby relinquished to " to the corporation of the city of Brownsville and their " successors in office, in trust for the use and benefit of

" said city: *Provided*, This act shall not impair private " rights.

"SEC. 2. *Be it further enacted*, That said corporation " shall have power and authority to sell and alienate any " portion of the lands owned by the said corporation, and " appropriate the proceeds thereof to the erection of a sub- " stantial jail and court-house for the use of the county of " Cameron, and the balance shall be appropriated for the " purpose of education within said city, and for no other " purposes: *Provided*, That no part of said land shall be sold or alienated until notice of such sale or alienation be given, by publishing the same in some newspaper in said city of Brownsville for at least sixty days previous to the day of sale or alienation of said land.

AN ACT to repeal an act to incorporate the city of Brownsville; approved January 24, 1850.

"SECTION 1. *Be it enacted by the Legislature of the* " *State of Texas*, That an act entitled 'An act to incorpo- " 'rate the city of Brownsville,' approved the 24th of Jan- " uary, 1850, be, and is hereby, repealed.

"SEC. 2. That this act take effect and be in force from " and after the first day of March, 1852.

"Approved January 8th, 1852."

AN ACT to incorporate the city of Brownsville; approved February 7, 1853.

"SECTION 1. *Be it enacted by the Legislature of the* " *State of Texas*, That the citizens of Cameron county, in " the State of Texas, residing within the limits of that sec- " tion of territory situated and lying on the left margin of " the Rio Grande, in the county of Cameron aforesaid, " formerly a part of the town-tract of four leagues of land " (*ejidos*) of the city of Matamoras, in the republic of Mex-

" ico, be, and they are hereby, declared a body politic and
" corporate by the name and title of 'the city of Browns-
" 'ville,' and by that name may sue and be sued, implead
" and be impleaded, in all courts and in all actions and
" matters whatsoever, and by the same name may, by deed
" or gift, grant or purchase, hold and dispose of any estate,
" real or personal, within the limits of said city, for the
" use of the corporation, and may have a common seal,
" which they may alter and change at pleasure.

* * * * * * * * *

"SEC. 8. That all property, together with all rights in
" action and claims to property of any and all kinds which
" were held, owned, occupied, and enjoyed by the citizens
" of said city under the act entitled 'An act to incorporate
" 'the city of Brownsville,' and which act was approved
" January the 24th, 1850, are hereby vested in the citizens
" of Brownsville, and all liabilities incurred by said citizens
" under said act of incorporation shall stand and be against
" the property vested in said citizens by this act."

This recalls to our memories the very many decisions of your Honors on the liability of municipalities for bonds issued to railroads, (*int. al.* San Antonio *vs.* Mehaffy, 96 N. Y., 312,) and the general superintendence of the national courts over the sanctity of all contracts made by natural or juridical persons. "Municipal corporations must pay "their debts" seems to be a doctrine pretty well settled, at least for a time. So when, in spite of this doctrine, nay, in its very teeth and for the sole purpose of defeating and annulling it, the State of Florida repealed the charter of the city of Pensacola, did all the city's property revert to that State? And if so, what became of its *obligations?* Your Honors, however, have maintained that doctrine, and held that "a change in the charter of a municipal

" corporation, in whole or in part, by an amendment " of its provisions, or the substitution of a new char- " ter in place of the old one, should not be deemed, in the " absence of express legislative declaration otherwise, to " affect the identity of the corporation, or to relieve it from " its previous liabilities."

Broughton *vs.* Pensacola, 93 U. S., 266–270.

" When, therefore, a new form is given to an old muni- " cipal corporation, or *such a corporation is reorganized* " *under a new charter, taking in its new organization the* " *place of the old one, embracing substantially the same cor-* " *porators and the same territory*, it will be presumed that " the legislature intended *a continued existence of the same* " *corporation*, although different powers are possessed " under the new charter, and different officers administer its " affairs; and *in the absence of express provision* for their " payment otherwise, it will also be presumed in such case " that the legislature intended that the liabilities, AS WELL " AS THE RIGHTS OF PROPERTY of the corporation in its old " form, should accompany the corporation in its reorgan- " ization."

The judge below announces " the ancient doctrine " of repeal of a corporation; but, as though in direct view of the present case and the contract clause of the Constitution, from which the keen eye of this court must never be averted, we have in the above extracts a direct answer to all that is said on this point in the opinion of the lower court. Indeed, it is somewhat difficult to see plainly on what ground reliance is placed; on the invalidity of the expropriation proceedings, or on the alleged defective ownership acquired by Texas in succeeding to the rights of Mexico, or in the legislation in regard to Brownsville.

V.

This suit involves title to lands in Texas, and has been already litigated and decided in favor of the plaintiff in error here, by the supreme court of the State of Texas, and reported as—

Basse *et al. vs.* Brownsville, 36 Texas, 461.

And we have already alluded to the fact that the case was argued on its merits before your Honors, but that it then involved no Federal question. No mention and no allusion is made to this case in the opinion of the court below. "But the decision of the State court on the construc-" tion of a State statute if not absolutely binding on this " court, is AT LEAST *entitled to the very highest considera-" tion and respect*, and is to be regarded as of *great au-" thority*."

Bradley, J., in Ct. Ct. U. S., [Florida,] May 31, 1879.

This is not the stilted, formal language in the conclusion of an ordinary letter to a Federal officer, but the serious, well-considered assertion of a principle of law and politics absolutely necessary to our continued existence as a free republic.

The foregoing argument as to the effect of the decree of expropriation is a mere extension of the principle announced in the Texas opinion. The lower judge decided differently.

The Texas opinion also pronounces upon the effects of four statutes of that State passed in relation to or in connection with the matter of the *exidos*.

1st. Act of January 24, 1850, incorporating Brownsville.

Rec., p. 49.

2d. Act of January 8, 1852, to repeal the above, to take effect and be in force from and after the first day of March, 1852. (P. 145.)

3d. Act of February 10, 1852, to relinquish the right of the State to certain lands. (Pp. 145, 146.)

4th. Act of February 7, 1853, incorporating Brownsville, [for a second time.] (P. 52.)

On the first act alluded to, the superior court of Texas decided that the *exidos* were the property of Texas in full ownership; and by this act, so vested in Brownsville. The lower judge decided both points differently.

On the *second*, the supreme court of Texas held that the charter of Brownsville could not be repealed so far as the ownership of the *exidos* was concerned. The lower judge decided otherwise.

On the *third*, the supreme court of Texas held that "the act passed on the 10th day of February, confirming "the title to the Espiritu Santo grant, could not affect the "title of the city of Brownsville" to the *exidos*. The lower judge decided that the defendants hold the *exidos* "under the Garza grant of 1781, *duly confirmed by the* "*act of* 1852," the statute in question.

On the *fourth*, the supreme court of Texas recognized Brownsville as the owner of the *exidos*, which were conveyed to her by Texas. The lower judge decided that not only had Texas no right to convey, as derived from the corporation of Matamoras, but even if she had she did not convey any property to the present corporation of Brownsville.

If the principles of law laid down in the opinion of the lower court are reasonable and exist, they will be undoubtedly found set forth in decided cases, or in the accumu-

lating masses of law literature. But neither the one nor the other is to be found in the opinion of the lower court, with but one single yet most extraordinary exception. The opinion reads, (p. 306:) "The question whether any rights "of beneficial ownership, requiring the constitution of a "trust for their support, existed in the citizens of Browns- "ville as a body, by virtue of the charter of 1850, after "its repeal was brought before the supreme court of Texas "in the case of Basse *vs.* Fontleroy, (11 Texas, 698,) and "the court held that all lands held by the city for public "purposes were liable to be disposed of by the legisla- "ture, and that all grants and trusts created by the first "charter were extinguished by its repeal. But the indi- "vidual citizens as such might have rights which were val- "uable, and which ought to be restored to them. *This is* "*all that was done by the new charter of* 1853."

Is it not too clear for argument that, carrying out in this way what was said by the Texas court in the quoted case, leads directly and at once to the violation of the contract clause of the United States Constitution? and to the total overthrow of the decisions of your Honors cited in the precedent paragraph of this argument? Besides, it is patent on the report of the case that the statute reincorporating Brownsville February 7, 1853, had nothing whatever to do with the opinion of the supreme court of Texas. Brownsville was no party to that suit; her rights were not involved or passed on.

The distinction between "citizens of Brownsville, as in- "corporated by the act" of February 7, 1853, and "the "corporation of Brownsville," as laid down on page 305 of the record, is unreasonable and unauthorized, unless we mistake all the essential and judicial matters of fact in the case.

See, also, the language of sections 1 and 8, Rec., pp. 52–54.

If Texas had no title whatever to the "*ejidos*" or Matamoras, we must admit that Brownsville had none. But both parties here claim under the State of Texas. The appellants claim by virtue of the above-cited acts of the legislature of Texas; the appellees claim from Texas, by virtue of an act of the same State, passed February 10, 1852, relinquishing the right of the State to the *Espiritu Santo* grant, *int. al.*

Our positions on this state of facts are—

1. That the appellees are concluded from denying title, or rather ownership, in Texas for the entirety of the Espiritu Santo grant, because—

(*a.*) They have acted on the grant and accepted it in its entirety. They now claim the *locus in quo* under this very grant. They are therefore concluded from asserting a better title, as against the grantor, to the *ejidos*, which form but *a very small portion* of the land granted.

(*b.*) And if the grant from Texas be void for the entirety of the Espiritu Santo tract of land on account of the absence of any interest therein on the part of Texas, we are then remitted to an inquiry into the validity of a Mexican grant, which is not relied on at all *apart from its confirmation by Texas.*

(*c.*) That the appellees' grant from Texas is void so far as the *locus in quo* is concerned results from the following facts:

That Texas vested all right, title, and interest in the *ejidos* in Brownsville, January 24, 1850, *in trust for certain educational purposes.*

See 2d section act of incorporation, Rec., p. 49.

That Texas vested in the appellees all its rights in the *Espiritu-Santo* grant, including the *ejidos*, February 10, 1852.

Thus Texas, *after* giving to Brownsville, gives to the appellees. But this the State clearly could not do. Admit, *a. g.*, that Brownsville was the mere creature of the State, which could at any moment repeal its charter and take back the *ejidos* which it had given *in trust* to that city, [the latter proposition we deny.] Still the law for the repeal of the charter was, by its very terms, to "take effect and be in "force from and after the first day of March, 1852."

When Texas gave to Cavazos her renunciation of title, her quit-claim, her relinquishment, therefore, she had not the slightest vestige of interest *in and to the ejidos*. All the estate therein ever held by Texas had been granted to Brownsville, and continued in Brownsville up to and including March 1, 1852.

Now, on February 10, 1852, the *ejidos* were not in the Espiritu-Santo grant, and could not be embraced in the renunciation made by Texas thereto. And the unanswerable question arises: How did the *ejidos* get into that act of February 10, 1852, *afterwards?* That is, after March 1, 1852.

And the 5th section of the act of relinquishment of February 10, 1852, specially provides "that the confirma-"tion herein extended to the lands mentioned in this act "shall in no way be construed to interfere with *any rights* "*which may have accrued to other parties before the pas-*"*sage of this act*, but the same shall remain without pre-"judice: *Provided*," &c., &c.

See the Act, Rec., p. 146.
Paschal's Dig., art. 4465.

And the recharter of Brownsville, section 8, (Record, p.

54,) provides in the most absolute manner for the vesting in the citizens of Brownsville "of all property, together "with all rights in action and claims to property of any "and all kinds, which were held, owned, occupied, and en- "joyed by the citizens of said city under the act" of January 24, 1850; and the section concludes—"all liabilities "incurred by said citizens under said act of incorporation "shall stand and be against the property vested in said "citizens by this act."

We entirely misunderstand the legal doctrine of *in pari materiâ*, if these extracts from the statutes embrace only "*the individual citizens as such*," who "*might have rights* "*which were valuable and ought to be restored to them*;" and "*this is all that was done by the new charter of* 1853." We are quite confident that the supreme court of Texas has never so decided.

Incivile est nisi tota lege perspecta una aliqua particula ejus proposita, respondere vel judicare.

Digest, Law 24, *de legibus*, (1, 3.)

Scire leges, non est verba earum tenere, sed vim ac potestatem.

Digest, Law 17, *de legibus*, (1, 3.)

The supreme court of Texas in Basse *vs.* Brownsville quote twenty-seven decided cases, most of them by this Court, in support of its opinion. Not one of these have been overruled. Have they all been misapplied? The affirmative is incredible.

And the majority of these cases are adduced to show that the question decided by the lower court was not judicial but LEGISLATIVE, and that no court, either National or State, could go behind THE LEGISLATIVE INQUEST.

With regard to these principles and in relation to these very ejîdos it was said by the supreme court of Texas, in Bissel *vs.* Haynes, (9 Texas, p. 584:) "In general, we would "regard the acts of the foreign sovereignty as not subject "to revision, and it would require a clear case of usurpa- "tion, without any authority of law to make the exception. "(See Holmes' Heirs *vs.* Peebles, 1 Texas, p. 709.) And "here the very judicious remarks of Judge Arrington, of "the 12th judicial district, seem so appropriate as to jus- "tify their insertion: 'It is objected, however, that the "'land previous to 1826 was the property of private own- "'ers, and that it was taken for ejîdos, without compensa- "'tion, in violation of the constitution of Tamaulipas. "'Supposing that to be true in fact, although it is denied, "'can it even be imagined that the courts of the new sov- "'ereign will undertake to revise the acts of a former gov- "'ernment, as being in conflict with the organic law?' "Besides, as the supreme court of Texas has said, the in- "terpretation of the constitution in Mexican States is "strangely confided to the legislative, and not, as with us, "to the judicial power. Our courts do not occupy the at- "titude of tribunals of appeal or error in relation to irreg- "ularities committed by the former authorities of Tamau- "lipas. We cannot afford to resuscitate and rake up from "the tomb of oblivious years the forgotten controversies "so long gone by."

Municipal corporations are liable to very sudden and remarkable metamorphoses by the power of the legislative departments, and especially is this the case now, and probably will be for some time to come in the various States of our Union. The case in hand is a case in point. But it is long settled that the corporations "remain the same, "as to debts and rights."

Colchester *vs.* Searer, 3 Burrows, 1866.

" But there is a limit to the power of the legislature " over property owned by a municipal corporation quite as " well established as their illimitable control over the or- " ganization of the corporation. That limit is, and is only, " that the legislature cannot divest the property of the cor- " poration or divert it to other uses."

City *vs.* Fox, 14 Smith, 169.
Montpelier *vs.* Montpelier, 29 Vermont, p. 21.

Here, the donees are the persons to be educated. Education is No. 3, 4, and 13 of the distinct charities set forth in the statute of Elizabeth—a public charity—a peculiar favorite with courts of equity.

Conceding now that the municipal corporations must be made to pay their debts, we think it will be admitted that in every point of view—moral, religious, political, or mercantile—the duty of educating their inhabitants is far more essential and obligatory. " The foundation of a republic " is the virtue of its citizens."

VI.

The present suit was instituted before the judge of the fifteenth judicial district of Texas in and for the county of Cameron, July 9, 1872. It was transferred to the national court by the defendants. It concerns the title to real property and involves *lex rei sitæ*. Your Honors have expressly decided that you were without jurisdiction under R. S. U. S., 709. A strange aspect the case presents now. You are again asked to examine and virtually overrule your own decision by affirming the decree of the lower court. To do this, would be to exercise general appellate jurisdiction over the highest courts of the States on questions pertaining *to the real property included within their*

own limits; and instead of following the decisions of the Texas courts, (R. S. U. S., 721,) introduce novel rules of action and principles of law wholly inapplicable to the juridical matters of fact involved in the suits.

Barrow *vs.* Hunton, not reported.
Basse *vs.* Brownsville, 36 Texas Rep., 461.

And if the decree of the court below is to stand, all the judges of the Texas supreme court were in error on all points of law discussed, and none of which involved a Federal question.

VII.

The pleadings bristle with pleas in bar, such as prescription and *res judicata.* A few words on both will suffice. The statute of Texas (Paschal's Digest, Article 5298) provides that in cases of trespass to try title, the verdict and judgment shall not be conclusive and definite against the plaintiff, but any time within one year he may commence his action *de novo.* The opinion below announces the doctrine that this action to try title *de novo,* thus accorded by law to the plaintiff, may be by *way of reconvention.* That what the law intended as a *sword* may be used as a *shield;* on the theory, doubtless, that *quæ temporalia sunt ad agendum sunt pepetua ad excipiendum.* Such a principle can never be applied to a party in possession; and Texas and Brownsville had been in possession of the *locus in quô* from December 19, 1836, the date when, by the act of Congress of the then independent State of Texas, her boundaries were extended to the Rio Grande.

Not only is this doctrine directly antagonistic to the settled construction by the supreme court of the State of Texas

of her own statutes, but appears to us directly opposed to the fundamental principles of all law. After one fair exhaustive trial of a suit for the ownership of lands, the interest of the republic proclaims that there should be an end to litigation as between the parties to the suit and their privies. That a different rule prevailed at common law in actions of ejectment grew unnaturally and unscientifically out of judicial legislation, which permitted to the plaintiff in this regard a multiplicity of actions. The statute of Texas provided against this evil by reserving to the plaintiff in ejectment the right to proceed *de novo* within one year. Now, the basic principle in all petitory actions in all civilized countries is that the plaintiff can recover only on the strength of his own title. To permit him to set up his invalidated title in reconvention would be to grant to him a right totally different from that accorded to him by the statute. A right of action and a right of reconvention are as different entities as any opposites the mind of man can conceive. "If *parties* are not satisfied with the result "of one action, the object of the statute is to compel them "to relitigate the matter without unnecessary delay;" and a year is fixed for the purpose. The manifest fallacy is in the word "*parties;*" the statute embraces *plaintiffs* only; neither defendants nor intervenors. To validate the assumed position the statute must be express. Indeed, it is quite clear throughout the entire case that the judge regarded the reconvention as a defence to a petitory action; and it required many persistent efforts and rebukes to counsel before "such a plea has been put in, not full and "clear at first, but rendered so by amendment afterwards, "which was *within the discretion* of the court;" to which we would add, "but in direct opposition and antagonism "both to the letter and spirit of the statute."

1 Paschal's Digest, art. 54, p. 107.

The city of Brownsville was one of "the parties" in the suit of Basse; but it was not "compelled" or legally bound in any way to "relitigate the matter without unnecessary delay; and a year is fixed for the purpose." The restriction of time did not affect the city. The statute was without the slightest applicability to their right to sue as it has been herein exercised. If the present suit of the city be considered a pure petitory action, trespass to try title, what is to prevent it from bringing a new suit as plaintiff within one year from a decision affirmed by your Honors? If so, clearly, "the unnecessary and vexatious litigation," alluded to in the opinion, would be promoted by the construction of the law now under criticism.

Word *vs.* Drouthett, 44 Texas, 375.
Magee *vs.* Chardoin, 44 Texas, 491.
Duncan *vs.* Magette, 25 Texas, 257.

VII.

The remaining assignments of error are reserved for the oral argument.

Respectfully submitted.

STEPHEN POWERS,
DURANT & HORNOR,
for Plaintiff in Error.

WASHINGTON, D. C., *June* 16, 1879.

SUPREME COURT

OF THE

UNITED STATES.

October 1879. No. 71.

The City of Brownsville,

Plaintiff in Error

—VS.—

Maria Josefa Cavazos,

et als. Defts. in Error.

BRIEF AND POINTS,

for Defts. in Error.

JAMES R. COX,
of Auburn, N. Y.
Attorney for Defendants in Error.

Evening Auburnian Print, Auburn, N. Y.

SUPREME COURT OF THE UNITED STATES.

THE CITY OF BROWNSVILLE, Plaintiff in Error. *vs.* MARIA JOSEFA CAVAZOS et. als. Def'ts in Error.	No. 71. Oct. Docket, 1879.

Error from Eastern District of Texas.

BRIEF AND POINTS

for Defendants in Error.

This was an action commenced in 1872 in the District court of Cameron county, Texas, removed by defendants into the Circuit court of the United States.

Trespass to try title: Defendants plead in reconvention, asserting title, demanding damages for plaintiff's trespass, and an adjudication of title.

The original parties are now all deceased, and their heirs are substituted. *Mrs. M. J. Cavazos* died November 1878, and Pedro G. Cavazos, her son and devisee is now substituted.

Mrs. Cavazos, as one of the devisees of *Mrs. Francesca Cavazos* (who died in 1835) by proceedings in partition, became seised of the middle third part of the *Espiritu Santo Grant* of 1781, including premises in question.

(See Map, page 45.)

Mrs. M. J. Cavazos, conveyed *the site of Brownsville* being then a part of her portion to *Basse & Hord*, April, 1852.

(Record p. 155.)

They conveyed the same to Stillman, Belden & Kennedy, 1858, and Belden & Kennedy subsequently to Stillman.

(Record pp. 160 &c.)

Stillman to Hale, 1866.

(Record p. 163.)

Mrs. Cavazos continued to own other lands adjoining the city, including *Fort Brown* property (occupying the bend in the river east and south of the city), until her death in November, 1878.

The history of the title, and of the litigations heretofore, are well stated in the opinion and findings of the Court.

(See Record pp. 39 to 45).

Plaintiffs claimed the whole property, as part of the *exidos* of Matamoras, under the first act incorporating Brownsville, of January 24, 1850.

(Record, p. 49).

ORDER OF EVENTS.

A. D.

1781. The Espiritu Santo Grant, by the Crown of Spain to *De La Garza*, who died about 1790, leaving his estate to his son *Blas de la Garza*, who died in 1802.

(Record p. 122.)

1802 Leaving his will, devising the estate to Don-

na Maria *Francisca* (De la Garza) *Cavazos*, his wife.

1825 Constitution of the state of Tamaulipas adopted.

(Record pp. 55, 56.)

1826 Proceedings for the *exidos* of the city of Matamoras commenced.

1827 Matamoras appoints an *appraiser*; Donna Francisca declines and refuses to appoint.

Order of government to proceed to the survey and occupation ("*ocupacion*") of the land, &c. P. 72.

1827 to 1829 She expostulates, resists and refuses; sues the trespassers on her lands.

(Record pp. 60 to 67.)

1831 to 1834 Proceedings of the Town Council (*Ayuntamiento*) as to *exidos*.

(Record pp. 73 to 75.)

1835 Donna Francesca dies, leaving by will her estate in equal parts to Maria Josefa Cavazos and others, who agreed upon a division of the lands of the *Espirita Santo* Grant, subsequently carried out in legal form in 1853.

(Record pp. 150 to 155.)

1836 The Republic of Texas, at war with Mexico, asserts the *Rio Grande* as her western boundary; does not undertake to take actual possion or control of this part of Tamaulipas. (*De-facto.*)

1841 Further tardy efforts to proceed with the

expropriation and survey of *exidos*, citing all parties (except Mrs. Maria J. Cavazos.)

(Record pp. 219 to 223.)

1841 July 22 Survey to begin *to-morrow*. (The last which appears to have been done.)

(Record pp. 223, 295.)

1846 The United States army under General Taylor occupy the premises and put an end to Mexican control.

1848 Treaty of Guaduloupe Hidalgo. (Proclamation July 4th.)

1850 January 24. First act of legislature of the state of Texas, incorporating BROWNSVILLE, conferring certain questionable title of the premises (all that was *owned* by Matamoras December 19, 1836) upon the city, "*but not to impair private rights.*"

(Record p. 49.)

1852 January 8th, repeal of the act of January 24, 1850, incorporating Brownsville.

(Record p. 145.)

1852 February 10, confirmation by the legislature of Texas of the original *Espiritu Santo Grant*, relinquishing *to the heirs and legal assigns* of the original grantee, all the interest of Texas.

(Record pp. 145 146.)

1852 April 14, Mrs. Maria J. Cavazos with her husband, conveyed the site of Brownsville to Basse & Hord.

(Record p. 155.)

1853 February 7, act of the legislature incorporating the *second* city of Brownsville, conferring (Sec. 8,) "all property, together with all "rights in action and claims to property of "any and all kinds which were held, owned, "occupied and enjoyed *by the citizens of said* "*city* under the act, (of January 24, 1850) are "hereby vested *in the citizens* of Brownsville; "and all liabilities incurred by said citizens "under said act of incorporation shall stand "and be against the property vested in said "citizens *by this act.*"

(Record, p. 52, &c.)

1854 The city authorities, having taken possession of part of a block of land in the city, to build a Market, the *First suit* in trespass is brought against it by Basse & Hord.

(Record, p. 296.)

Verdict and judgment for plaintiffs Basse & Hord, against the city.

(Record, p. 21.)

(Should appear, but has been omitted—Hiatus p. 299.)

1858 to 1867 Writ of Error from Supreme Court; continuances, and action of the Court, adjudging *Error.*

(Record p. 299.)

1872 June 27, *In the absence of counsel for plaintiff*, and on the ex-parte motion of attorney for the city, the judgment is afterward amended, reversing the former judgment and *dismissing*

the cause; without any adjudication as to the land in dispute.

(Record, pp. 300, 301.)

1872 July 9. Twelve days afterward the *city of Brownville* commences the present action in District Court, against the original defendants, (*all non-residents*) by *publication* in a local newspaper.

(Record, p. 1.)

1873 April Term. Defendants all appear and answer by Wm. G. Hale their attorney.

1875 March 3. By leave of the Court, defendants serve their several amended answers; and this cause removed, according to act of Congress, into the U. S. CIRCUIT Court, for Eastern District of Texas.

(Record pp. 8 to 12.)

1875 March 9. Cause ordered to be transferred to Galveston in said District, for trial.

(Record p. 13.)

1876 Janu ary 5. Suggestion of death of Charles Stillman and Wm. G. Hale, and substitution of their heirs as defendants.

(Record pp. 14, 17.)

1876 May Replications of plaintiff to defendants' pleas.

(pp. 17 to 25.)

Disclaimer of defendants to certain portions of premises.

(p. 25.)

May 31. Defendants further amend their pleas in reconvention, asking an adjudication as to title.

(p. 30.)

1876 June 5. Cause tried and submitted, and judgment for defendants.

(p. 301.)

DEFENDANTS' POINTS.

I.

The title of defendants to the premises in question appears unquestionable; unless it has *passed* from them by the attempted *exidos* proceedings of 1826 &c.

A. Act of February 10, 1852, (pp. 145 &c.) PATENT from the State of Texas, (pp. 156 &c.) referring to the original Grant.

B. If these premises had been, prior to 1836, *public land*, held by any public authorities of the Mexican Republic, State or National, it would have beeome the property of the Republic of Texas by right of conquest.

No pretended title granted by any public Mexican authority, could have availed against it.

C Had the attempted ex-propriation, commenced in 1826, been completed prior to 1836. so that the fee of the land passed *from* Mrs. Cavazos *to* Matamoras; even then, as the title would have passed to the

Republic of Texas, the subsequent GRANT by Patent of the State of Texas, would necessarily revest such title in the Grantees.

(Record, p. 157.)

McIlvaine v. Coxe 4 Cranch 209.
Bernett v. Boggs, 3 Cir. N. J.
Baldwin 60.
Holmes v. Goring 2 Bingh. 76.
McDonald v. Lendall 3 Rawle 492.
Collins v. Prentice 5 Conn. 39
U. S. v. Harris 2 Sumn 27.
Harris v. Elliott 10 Peters 25.

"No alien shall hold land in Texas, except "by titles emanating directly from the govern- "ment of this Republic.

(Const. of Rep. of Texas, 1836. General provisions, Sec. 10.)
Jones v. Menard 1 Tex. 771.
Perchman's Case, 7 Peters.
Trimble v. Smithers 1 Tex. 802.
Smith v. United States 10 Pet. 332.
Buyck v. United States 15 Peter 215.
O'Hara v. Same Id. 275.
U. S. v. Delespine Id. 319.
U. S. v. Miranda 16 Pet. 153.
Barry v. Gamble 3 How. 56.
U. S. v. Arredondo 6 Pet. 691.
Martin v. Waddell 16 Id. 367.
Clark v. Peters 13 Id. 395.

II.

The grant, "*in trust*" of what was "*owned*" by Matamoras, conferred by the first act (incorporating Brownsville) of January 24, 1850, did not purport to enlarge, qualify or extend the actual title of Matamoras.

(Record p. 49.)

A. If the title of Matamoras was expectant, inchoate, incomplete, depending upon a further constitutional condition yet to be performed, and *which never was performed*, then Matamoras had no title which could be granted by Texas, except *cum onere*.

B. But by the organic law of the state of Tamanlipas, that property could not be taken for public use, without *previous* indemnity.

(Record p. 56, art. 13.)

C. True that by that constitution it is made the duty of the citizen to appoint an arbitrator or appraiser, and equally true that Mrs. Cavazos steadily refused to appoint one ; but such refusal and neglect did not authorize a *confiscation* of her property according to that constitution, nor was such confiscation attempted. The provision for previous indemnity remained, and no penalty for such neglect seems to have been provided.

For such *penalty*, if any, and for the *effect* of such refusal, we must look to the Mexican tribunals.

D. Again ; the pretended grant from Texas to Brownsville, of January 24, 1850, excepted "PRIVATE RIGHTS."

Basse v. Fontleroy, 11 Tex. 707.
Howard v. Perry, 7 Id. 266.
Hart v. Gibbons, 14 Id. 216.

III.

The *property*, *fee*, or absolute title of the premises was never acquired by Matamoras in fact.

A. It is evident from the proceedings found in the Record (pp. 58 to 75, 219 to 223, 290,) ex-

tending through fifteen years of desultory action, that not only no previous indemnity was ever provided, but no complete *survey* was ever made.

B. On the 22d July, 1841, the official survey was to begin "*to-morrow.*"

(Record p. 295.)

And this is the last we hear until 1848. Yet under the orders of the government of October 15; 1827, (Record p. 72, 73,) the lands in question were partly "*occupied*" as *exidos*, until the advent of the United States army in 1846.

C. The constitution of the state of Tamanlipas, (as it would doubtless be interpreted by any civilized court,) seems adapted to protect the private owuer, so that no title ("*propriedad*") could pass except by *previous* compensation.

Art. 13 of Const. of T.

(Record p. 56.)

D. Substantially the same provision is found in all our state constitutions, except the word "*previous.*"

Yet it is held that until actual tender of the compensation, the title of the owner is not divested, as appears hereafter.

E. Under the constitution of Tamaulipas, the *Congress* exercised the attribute of interpreting and explaining the law of the state.

Art. 92.

(Record p. 56.)

And as a *proper exposition* and *interpretation* of the law of Tamanlipas, the action of the Congress on this point (of divesting title before indemnity,) and in this case, would seem to be good authority.

(See Record, pp. 224 to 232.)

That the action of this tribunal upon this occasion should be regarded as the proper exposition and interpretation of the constitution and law of Tamaulipas, we cite

Houston v. Robertson, 2 Tex. 25, 27.
Goode v. McQueen, 3 Id. 257,
Strother v. Lucas, 12 Peters 438.
Gelston v. Hoyt, 1 John. Ch. N. Y., 547.
Voorhis v. U. S. Bank, 10 Peters 471.
Nations v. Johnson, 24 How. 206.

Unless it is shown that such decree or judgment was obtained by *fraud*.

Vattel Bk. 2 Ch. 7 Sec. 84.
1 Starkie Ev. 228, 6 Am. Ed.
2 Phil. Evid. 183 and note.
Gresley's Eq. Evid. 339.
Story's Confl. of L. 506, 507.
Roscoe on Evid. 107.
Plumer v. Wooburn, 8 John. 177, pr.

KENT J.

This resolution of the Congress is distinctly placed upon the constitutional requirement. P. 232.

F. In the State of New York, it is held that the *property* is not divested until the compensation is made.

Baker v. Johnson, 2 Hill 342.
Bloodgood v. R. R. Co., 18 Wend. 9.
Rexford v. Knight, 11 N. Y. 314.

So in the state of Maine.

Cushman v. Smith, 34 Maine 247.
Nichols v. Somerset, 43 Ib. 356.

G. The general current of authority in the United States, tends strongly towards the maintainance of the private right of property.

1. Private property cannot be acquired by the exercise of the power of eminent domain,

unless just compensation is paid or secured to the owner; and equity will interfere to protect the right of property until such compensation is paid or secured.

Commissioners vs. Bowie, 34 Ala. 461.
Young vs. McKenzie, 3 Ga. 31.
Gunter vs. Geary, 1 Cal. 462.
San Francisco vs. Scott, 4 Id. 114.
McCann vs. Sierra County, 7 Id. 121.
Colton vs. Rossi, 9 Id. 595.
McCauly vs. Weller, 12 Id. 500.
Bursley vs. Mountain Lake & Co., 13 Id. 306.
Johnson vs. Alameda, 14 Id. 106.
Curran vs. Shattick, 24 Id. 427.
Reynolds vs. Reynolds, 5 Conn. 84.
Parkham vs. Decatur Co., 9 Ga. 341.
Powers vs. Armstrong, 19 Id. 427.
Evansville, &c. R. R. Co. vs. Dick, 9 Ind. 433.
Cushman vs. Smith, 34 Me. 247.
Hamilton vs. Annapolis, &c. R. R. Co., 1 Md. Ch. 107.
Harness vs. Chesapeake, &c. R. R. Co., 1 Id. 248.
Boston &c. R. R. Co., vs. Salem &c. R. R. Co., 2 Gray (Mass.) 1.
Petition of Mount Washington Road Co., 35 N. H. 134.
Ten Eyck vs. Delaware, &c. Canal. 18 N. J. L. (3 Harr.) 200.
Star vs. Camden R. R. Co., 24 N. J. L. (4 Zab.) 592.
Carson vs. Coleman, 11 N. J. Eq. (3 Stock.) 106.
Gardner vs. Trustees of Newburgh, 2 Johns. (N. Y.) Ch. 162.
Bonaparte vs. Camden, &c. R. R. Co., 1 Baldw. 205.
Haight vs. Aqueduct, 4 Wash. 601.
People vs. White, 11 Barb. (N. Y.) 26.
Hartwell vs. Armstrong, 19 Id. 166.
Buffalo, Bayon &c. R. R. Co. vs. Terris, 26 Tex. 588.

2. No action lies for the value of land taken for a way which cannot be legally taken without first making just compensation.

Nichols vs. City of Bridgeport, 23 Conn. 189.

A landholder, instead of enjoining a corporation from taking his property before just compensation is made, or sueing for damages, may bring his action to recover the value of the land.

Rome vs. Perkins, 30 Ga. 154.

3. The constitutional prohibition against taking private property for public uses, without compensation being made therefor, does not require that compensation shall be made before the taking of the property, but leaves it open to the legislature to prescribe the mode in which the amount of compensation shall be ascertained, and the time of payment.

McCormick vs. Town of Lafayette, 1 Ind. 47.
S. P. Jackson vs. Winn. 4 Litt. (Ry.) 323.
See also Mercer vs. McWilliams, Wright (Ohio) 132.
Bates vs. Cooper, 5 Ohio 115.
Young vs. Buckingham, Id. 485.
Willyard vs. Hamilton, 7 Id. 112.
Smith vs. Helmer, 7 Barb. (N. Y.) 416.
Pittsburg vs. Scott, 1 Pa. St. 309.

Note. This must be doubtful. Suppose the Legislature, or other public officers delay indefinitely, and claimant dies. Would not *title* descend to heirs?

4. The constitutional prohibition against

taking private property for public uses until compensation has been paid, or tendered, *means the actual taking*, and not the preliminary steps of surveying and assessment of damages, which do not require such tender in order to be legal.

Stewart vs. Mayor of Baltimore, 7 Md. 500.

Under the provision of the bill of rights of Mississippi, "that no person's property shall be taken or applied to public uses without the consent of the legislature, and without a just compensation first made therefore," the compensation must precede the seizure for public uses.

Thompson vs. Grand Gulf R. R. &c. Co., 4 Miss. (3 How.) 240.

5. In cases of inevitable necessity,—such as the necessity of destroying buildings, to arrest the progress of conflagrations,—but only in cases where the necessity is so urgent as to admit of no delay, private property may be taken without first providing for compensation.

Sorocco vs. Geary, 3 Cal. 69.
Taylor vs. Plymouth, 8 Metc. (Mass.) 462.
Fisher vs. McGirr, 1 Gray, (Mass.) 1.
McDonald vs. Redwing, 13 Minn. 38.
Penrice vs. Wallis, 37 Miss. 172.
American Print Works vs. Lawrence, 23 N. J. L. (1 Zab.) 9.
Hale vs. Lawrence, Id. 590.
21 N. J. L. (1 Zab.) 714.
Miller vs. Craig, 11 N. J. Eq., (3 Stock) 175.
Russel vs. Mayor &c. of New York, 2 Den. (N. Y.) 461.

Pentz vs. Ætna Ins. Co., 3 Edw. (N. Y.) 341.
Coe vs. Schultz, 47 Barb. (N. Y.) 64.
Republican vs. Sparhawk, 1 Dall. 357.
Parkham vs Decatur, 9 Ga. 341.

6. The provision in the constitution declaring that "private property shall not be taken for public uses without just compensation," does not prohibit the legislature from authorizing a temporary exclusive occupation of the land of an individual, as the incipient proceeding to the acquisition of a title to it, or to an easement in it for a public use, although such occupation may be more or less injurious to the owner. But such occupation becomes unlawful, unless the title or the easement is acquired within a reasonable time: otherwise, the occupiers become trespassers *ab initio*. In the case of a temporary occupation by a railroad company, two years was held under the circumstances of the case, not an unreasonable time.

Nichols vs. Somerset, &c. R. R. Co., 43 Me. 356.

7. The power of a legislature in respect to taking private property is limited to ordaining that it may be taken upon compensation. The legislature cannot constitutionally, determine on the amount of the compensation or value of the land. This can, constitutionally, be effected only in three ways: 1. By the parties: that is, by stipulation between the legislature and the proprietor of the land. 2. By commissioners mutually elected by the parties. 3. By the intervention of a jury.

Circ. Ct. (Pa.) 1795, Vanhorne vs. Dorrance, 2 Dall. 304, 312.

The payment must be made, or security provided for, as a condition precedent to the appropriation of the property.

3rd Circ. (N. J.) 1830, Bonaparte vs. Camden R. R. Co., 1 Baldw. 205, 218. 2 Dill. 376.

Private property cannot be taken for public use, until compensation *is actually* made: it is not enough that a provision is made by law for ascertaining and making compensation *afterwards*.

Avery vs. Fox 1 Abbott N. S. 246. (6 Circ. Mich. 1868)

The legislature, in providing for the taking of private property for public uses may also prescribe the manner in which compensation therefor shall be made, and, if such manner be free from any unreasonable requirements, may provide that a failure to seek compensation in that manner shall be deemed an absolute waiver of all claims therefor.

1864, Shearer vs. Commissioners, 13 Kan. 145.

(This seems to be *as far* towards restricting or abridging the constitutional right, as any of our Courts have gone.)

H. The *objections* (Record p. 224) of plaintiffs to the proof of these proceedings, did not go to the *form* of proof, or to the *genuineness* of the documents, but were directed solely to the *effect* apprehended.

(The *authenticity* of these documents was well known to both parties and was not dis-

puted; and the evidence was received only as a judicial exposition of the law. Record p. 43.

The controversy had arisen between citizens of the State of Tamaulipas, and the Municipality of Matamoras, respecting the legal effect of incomplete proceedings for expropriation of lands; which proceedings had been delayed in part by the "*rebeldia*" of Mrs. Cavazos, and in part by the war with Texas.

The Tribunal had complete jurisdiction of the subject matter, and of the parties before it.

(Record pp. 224 to 232.)

The pertinence and relevancy of this evidence (of what is the law of Tamaulipas) would have been the same, had the controversy arisen in the western portion of that State, in reference to land. It was a *judicial decision* of the highest Tribunal of the State; and the point decided was, that the *title* (*propriedad*) never passed from the owners.

(Record p. 232.)

Doubtless the same decision would have been reached in every respectable Court in the United States.

I. Our Courts hold, that when a City or a R. R. Co. take proceedings to condemn land, and even take preliminary possession, but afterward withdraw their proceedings before compensation paid, the title does not pass, and the private owner resumes his possession.

Stacy v. Vermont Cent. R. R. 27 Verm. 39.
Hetfield v. Central R. R. 5 Dutch. 571.
Hudson R. R. Co. v. Outwater 3 Sandf. 689.
Graff v. Baltimore 10 Maryl. 544.
Water Com'rs of Jersy C. 31 N. J. 72.
Baltimore v. Susq. R. R. Co. 10 How. 395.

IV.

The plaintiff, being a Municipal corporation, "*The City of Brownsville*," shows no color of title to the premises.

A. Its predecessor, by the act of January 24th, 1850, (Record p. 49,) incorporating the first city of Brownsville, received a grant (in trust for government objects) of all the rights "*owned*" by Matamoras, *but not to impair private rights*. This no doubt was a blundering act, passed in ignorance of the true state and condition of the property.

But its proper effect amounted but to this: that IF that land was "*owned*" by Matamoras, then it was given to Brownsville *in trust* for governmental uses, saving any "*private rights*."

B So that the party claiming under that act, must show the "title" of Matamoras in 1836. But we have seen that the proper tribunal to ascertain and pronounce upon the "title" of Matamoras, held that it had *no title*, and enjoined the city from pretending to dispose of the lands.

(We do not claim this decision made in 1848 [Record p. 232] as a judgment *in rem;* but as merely an exposition of the *law of the state* of Tamaulipas, showing that by that law, Matamoras had no title in 1836, for want of indemnity paid or provided.)

But again:—

C. By the absolute repeal of the act of January 24, 1850, the civil existence, as well as the *quasi* grant of the city are extinguished.

(Act January 8, 1852, Record p. 145, to take effect March 1, 1852.)
Basse v. Fontleroy, 11 Tex. 698.
Angell & A. on Corporations, 9th Ed. Art. 31.
Aspinwall v. Commis., 22 Howard, 364.
Hartford v. Bridge Co., 10 Howard 511.
People v. Morris, 13 Wend. 331.
Terrett v. Taylor, 9 Cranch 43.
Bradford v. Cary, 5 Greenl. 339.
Marietta v. Fearing, 4 Ohio 427.
Mills v. Williams, 11 Iredell, N. C. 558.
Shearman & Redf. on Negl. p. 143.
Darlington v. Mayor, 31 N. Y. 164.
Cooley's Const'l Lim., 2d Ed. 191.

This act (repealing Brownsville) *having been passed* January 8, 1852, to take effect March 1st ensuing, the legislature confirms the original grant of 1781 "to *the heirs and legal assigns*" of Salvador de la Garza.

(Act of February 10, 1852, Record pp. 145 &c.)

As to the *power* of the legislature to repeal both *grant* and *charter*,

Basse v. Fontleroy, 11 Tex. 698.
Cooley's Const. Lim. 235, 236,

distinguishing from such as

Dartmouth College Case, 4 Wheat. 698.
People v. Morris, 13 Wend. 331.
Benson v. Mayor, 10 Barb. 244.
Bristol v. Newchester, 3 N. H. 532.
Pawlet v. Clark, 9 Cranch 292.
Terrett v. Taylor, Ib. 43.

D. The act (of incorporation of the second city of Brownsville) passed in 1853, (Record p. 53, 54, Sec. 8,) granted nothing of this property to the plaintiff,

1. Because,

The state of Texas had already granted it to the heirs and assigns of Garza (*ante*) and the title (so far as the state of Texas could confer it,) was vested a year before, in those heirs and assigns.

(Act of February 10, 1852, Record p. 145.)
(Patent accordingly, Record pp. 156 &c.)

2. Because by that act (of February 10, 1852, Sec. 8) no *grant whatever* was made to the *city of Brownsville.*

True, every *citizen's* property, "*held, owned, occupied and enjoyed*" by him under the former (repealed) act, was vested in him, and his liabilities were a charge upon it.

Again:—Certain parties had made grants to the *former* city (Record p. 164) "the use and easement." Also cemetery &c., p. 28, 29.

Whether such property was intended by Sec. 8 of that act (February 7, 1853) to be confirmed to "the citizens"—query.

But at all events "*property*" which had been held "*in trust*" (Sec. 1 of act of 1850, Record p. 49) by the former city of Brownsville, for governmental purposes, and after-

wards withdrawn by the repeal of the act, could not be regarded as "*property, held, owned, occupied* and *enjoyed*" by the "*citizens*" of said former city. Nor is this action brought by any such plaintiff.

V.

The plaintiffs' plea of "*Res adjudicata,*" is not sustained by the evidence.

A. 1st. Because it adjudicates nothing on the issues presented. (Record p. 300.) No original judgment in the lower Court, appears to have been pronounced.

2d. The reversal of the judgment of the lower Court (assumed to have existed) exhausted the power of the Supreme Court. It had "*Appellate* jurisdiction only." (Texas Constitution of August 1845.)

ART. IV. Sec. 3.

"The right of trial by jury remains inviolate."

ART. I. Sec. 12.

They therefore had *no power* to adjudicate *title* of the premises; and did not undertake to do so, as appears from the Order of Court.

(Record p. 300.)

B. The "*amended order*" was pretty clearly an *irregular* proceeding, (obviously *ex parte*).

(Record p. 301.)

C. This "*dismissal*" amounted but to a *Non suit*, and (independently of any statute,) does not bar a new action.

Dangerfield v. Paschal 20 Tex. 541.
Allen v. Stephens 18 Tex. 669.
Martin v. Wayman 38 Tex. 655.

So in other States.

In N. Y. Coit v. Beard 33 Barb. 357.
35 Id. 271.
22 How. Pr. 289.
12 Abb. Pr. 462.
51 N. Y. Rep. 391.
7 English (Ark.) 369.
23 Calif. 354.
7. Black (Ind.) 541.

D. Also because—if the former *verdict and judgment* had passed in that action against Basse & Hord the plaintiffs therein or their Grantees being non-residents were entitled to bring a new suit, at any time within *two* years.

Statute. Art. 5298 (3226) 7 of Pasch. Annot'd Dig. (Ed. 1866.)

This being so, even if "*verdict and judgment*" had gone against Basse & Hord, (which is not the case), the right to bring a *second* suit, appears clear.

It is a "statute of limitation."

McMillan v. Werner 35 Tex. 419.

VI.

Defendants' Plea of *Reconvention*, was orderly and complete.

A. This practice is derived from the Civil Law, and obtains in Spain and in Louisiana, as well as in Texas.

In Coleman v. Bunce (37 Tex. 172) the Court says:

"Deriving our system in a measure from "the Civil Law, we have retained many of its "peculiar doctrines, especially in our practice "and procedure."

"At common law, the Defendant had his "remedy by "*set off*" and "*recoupment.*"

"Following more nearly the practice in the "Equity Courts, we have borrowed from the "Civil Law, the remedy by way of "*reconven-*"*tion*;" giving a broader scope to matters "which may be put in litigation in the same "action. By "*recoupment*, the defendant "could defeat the plaintiff's action, and re-"cover his costs: but by "*reconvention*" he "may do much more, and recover damages "against the plaintiffs."

In Walcott v. Hendrick (6 Tex. 406) per Hemphill J. p. 413.

"The system of Spanish jurisprudence was "about being abrogated, and the common law "(except pleading) was on the point of being "introduced. A plea known to the former "system, having defined objects and limits, "was retained by name; and we recur to that "system, to ascertain its extent, its legitimate "objects, and the matters which might be al-"leged. But reconvention was more extensive "than discount, or set-off: the demand need "not be liquidated.

"In Louisiana, it is essential only that the

"demand be necessarily connected with, and "incident to the main action.

7 N. S. 517.
6 Id. 71 10 La. Rep.

"The plea in reconvention was intended to "effect some purpose beyond set off. They "had been distinct in the system we were "abandoning.

(7 Tex. p. 414.)

B. The decisions of the Louisiana Courts exemplify the plea of reconvention satisfactorily.

"The claim must necessarily be connected "with plaintiff's demand."

7 N. S. 517.
13 Louis'a 65.
7 Louis'a R. 564.
15 Id. 25, 378.
9 Id. 20.
2 R. 216.
3 La. ann'l. R. 617.
5 La. 303.
10 Id. 627, 745.
15 Id. 409.
9 Mart. 646.
Condensed Repts. S. C. N. S. Vol. 4. 246, 338.

C. "Plaintiff's demand, and the plea in recon- "vention, should be acted upon in the same "judgment."

Bailey v. Smith 12 La. 506.
18 La. 80.

"The object of the rule is to diminish litiga- "tion, and to bring the contest between the "parties to a speedy termination."

18 La. 80.

D. "A Defendant is essentially a *Plaintiff*, "when he makes a reconventional demand."

23 La. An'l. Repts. 769.

"He who reconvenes, is considered as a "*plaintiff*."

Cond'd La. Rep. S. C. N. S. Vol. 4. 116.

"And defendant may have judgment for his "claim by way of reconvention, though the "plaintiffs do not establish theirs."

Gilly v. Logan 2 N. S. 196.

E. The Texas decisions are equally clear on this subject.

"The limit of the right to plead in recon- "vention, in our practice, is, that the matters "pleaded, or the damages claimed must have "grown out of, or be in some way connected "with, or incidental to the main action."

21 Tex. 361.
25 Tex. 246, 507.
37 Id. 171.
7 Id. 55.
9 Id. 397.
11 Id. 28, 31.
18 Id. 147.
19 Id. 289.

"If defendant's claim is necessarily con- "nected with, and incidental to the subject of "the main action, it may be pleaded in recon- "vention."

5 Tex. 504.
7 Tex. 58.
21 Id. 538.
21 Id. 361.
25 Id. 246.
23 La. An'l R. 422.

"The plea is regarded as in the nature of a

"cross-bill seeking equitable relief, and it "must aver matter which would be good in "an original bill, or would constitute a good "cause of action at law."

Pasch. Dig. Vol. 3 Sec. 20,966, citing
5 Tex. 201.
6 Tex. 418.
7 Id. 184.
21 Id. 361.
37 Id. 172.
20 Id. 178.
16 Id. 221.

"Upon the whole, we conclude that defen- "dant may plead in reconvention, by what- "ever name the plea may be called, in his "defence and for redress, all matters neces- "sarily connected with the main action, and "incident to the same."

6 Tex. 417, 418.
25 Id. 251.
31 Id. 49.

In Griffin v. Chubb (16 Tex 219) the Court says:

"The defendant was brought into Court by "the plaintiff, and invited to litigate his rights "in that action. The necessity of his insti- "tuting a distinct suit was thereby dispensed "with.

In Cunningham v. Wheatly (21 Tex. 184.)

"As to his plea in reconvention, the defen- "dant is to be deemed the actor, and occupies "the attitude of a plaintiff."

"Nor can plaintiff dismiss the action, or "submit to a non-suit, after a plea in recon- "vention, so as to defeat the plea. The action "may be prosecuted by the defendant.

5 Tex. 501.
21 Id. 184, 537.
See also 9 Mart. (La.) 588.
Thomas v. Hill 3 Tex.
Egery v. Power 5 Id. 501.
7 Tex. 55.

"It seems to us of less consequence whether "the real actor in the case be the plaintiff or "the defendant, than that their respective "rights be adjudicated and settled with the "least possible circuity, litigation and ex- "pense."

Egery v. Power 5 Tex. 501
Where the whole doctrine is reviewed.

So in 2d Mart. (La.) N. S. 82.
Bradford v. Hamilton 7 Tex. 55.
Castro v. Gentilly 11 Id. 28.

F. Our Pleas in reconvention were regular and sufficient.

1, Mrs. Cavazos' *first* plea was simply "Not guilty."

(Record p. 3.)

afterwards amended by leave of the Court.

(Record p. 8.)

2. The first pleas of Stillman & Hale were in reconvention; not however defining their claim "by *metes and bounds*;" and therefore plaintiff demurred.

(Record pp. 4, 5, 7.)

Defendants Stillman & Hale then by leave, amended their pleas.

(Record pp. 9, 10, 11.)

3. By leave of the Court, *all* the defendants further amend their pleas in reconvention;

asking for the adjudication of the Court of the title to said premises &c.

(Record p. 30.)

4. To which plaintiff *replied* (as to Stillman & Hale's heirs) pleading estoppel by the Basse & Hord Judgment &c.

G. These amendments of Pleas, constituting no ground of *surprise* to plaintiff, and tending only to *perfect* the pleas in reconvention, were properly permitted by the Court in the exercise of a reasonable discretion.

We therefore ask, that this Writ of Error be dismissed, and the Judgment *affirmed* with costs.

JAS. R. COX,
Att'y for Def'ts in Error.

AUBURN, N. Y. Sept. 1879.